

(15,724.)

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 840.

ROBERT PERRIN, APPELLANT,

*vs.*THE UNITED STATES, THE CRITTENDEN LAND AND  
CATTLE COMPANY, ET AL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

## INDEX.

	Original.	Print.
Caption .....	1	1
Petition.....	2	1
Map of San Ygnacio del Babocomari grant.....	4	3
Summons.....	6	3
Proof of service ..	7	4
Order to file papers for inspection of United States attorney, &c....	8	4
Answer of United States .....	10	5
Record of trial and submission ..	11	5
Evidence.....	12	6
Testimony of R. C. Hopkins.....	13	6
Ramon Aldaretta.....	25	14
Isodoro Castro.....	28	16
Jesus Nunez.....	32	20
José Rodriguez .....	37	23
George J. Roskruge .....	40	26
F. C. Merrill .....	63	43
Christopher Layton.....	66	45
William J. Ross .....	69	48
Peter R. Brady.....	70	48
H. O. Flipper .....	70	48
R. R. Richardson .....	82	57
R. C. Hopkins (recalled).....	87	60



	Original.	Print.
Exhibit A—Original title rancho of San Ignacio del Babocomari	90	62
B—Translation of foregoing title	110	72
Exhibits 1 to 11—Photographs	125	80
Telegram from Geo. Hill Howard to treasurer general, March 27, 1894	127	80
Telegram from treasurer general to Geo. Hill Howard, March 28, 1894	128	81
Exhibit C—Testimony of Francisco S. Leon	129	82
D—Testimony of Santiago Espinosa	131	83
F—Copy of will of Juan Elias Gonzales	133	84
F <sup>2</sup> —Translation of foregoing will of Gonzales	159	97
G—Copy of will of Josefo Coronado	181	110
G <sup>2</sup> —Translation of foregoing will of Coronado	190	114
H <sup>1</sup> —Power of attorney, Robles to Gonzales	199	118
H <sup>2</sup> —Translation of foregoing power of attorney	204	120
I—Deed from Uriarte <i>et al.</i> to E. B. Perrin, July 23, 1877	206	121
J—Deed from E. B. Perrin to Rob't Perrin, June 23, 1881	211	121
K—Certificate of appointment of administrator of Frank Ely	215	125
L—Copy of entry in book of Toma de Razon	216	126
M—Derangement of title of Santiago Ainsa, administrator, to San Ignacio del Babacomari grant	217	126
N—Deed from Ainsa <i>et al.</i> to Franklin, December 24, 1886	219	127
O—Deed from S. M. Franklin to R. C. Ely, January 3, 1887	221	129
P—Deed from Elias <i>et al.</i> to R. C. Ely, February 3, 1887	223	130
Q—Deed from Elias <i>et al.</i> to R. C. Ely, February 8, 1887	226	132
R—Deed from Maytorena to R. C. Ely, February 8, 1887	229	133
S—Deed from R. C. Ely <i>et ux.</i> to Frank Ely, July 30, 1887	232	135
T—Deed from Varela to Christie, April 2, 1888	236	138
U—Deed from Serrano to Christie, April 23, 1888	238	139
V—Deed from Christie <i>et ux.</i> to Ainsa, trustee, January 24, 1893	240	140
W—Certificate of appointment of administrator of Frank Ely	242	142
X—Testimony of Elena Varela	243	142
Y—Certificate of treasurer general as to Manual Book of 1829	254	148
Z—Certificate appended to Boquillas expediente	255	148
Final decree	256	149
Petition for appeal	257	149
Order allowing appeal	259	150
Citation	261	151
Proof of service of citation	262	151
Bond on appeal	263	152
Clerk's certificate	266	153

1 (*San Ygnacio del Babocomari Private Land Claim.*)

Transcript on appeal.

UNITED STATES OF AMERICA, }  
Territory of Arizona, } ss:

Be it remembered that heretofore, to wit, on the 27th day of February, A. D. 1893, Robert Perrin, by his attorneys, Craig & Meredith, filed in the office of the clerk of the court of private land claims, at Tucson, in the Territory of Arizona, a petition; which petition is in the words and figures following, to wit:

2 The Court of Private Land Claims of the United States.

ROBERT PERRIN, Plaintiff,

vs.

THE UNITED STATES OF AMERICA, THE CRITTENDEN  
Land and Cattle Company, R. R. Richardson, Naber  
Pachico, David Choate, A. G. Carroll, Thomas Smith, C.  
L. Douglas, L. Craft, Santiago Ainsa, Administrator, with  
Will Annexed, of the Estate of Frank Ely, Deceased;  
Santiago Ainsa, Trustee and Administrator of the Es-  
tate of Jose Juan Elias, Deceased; Angel Verela, Elena  
Verela, Jesus Elias de Serrano, A. Smith, B. Smith, C.  
Smith, and D. Smith, Defendants. } No. 31.

To the honorable justices of said court:

The plaintiff by this, his petition, respectfully shows:

That on the 25th day of December, 1832, the State of Sonora, in the Republic of Mexico, granted and conveyed to Ygnacio Elias and Dona Eulalia Elias that certain tract of land situated at that time in the State of Sonora, in the Republic of Mexico, but now in the Territory of Arizona, known and designated as the Rancho "San Ygnacio del Babocomari." A particular description of said tract of land is hereinafter particularly set forth. The said grant was complete and perfect at the time that the same was made and at the time of the transfer of sovereignty to the United States. The form of the said grant was a patent or grant based upon a sale, and it was executed by Jose Mendoza, treasurer general of said State, under the seal of the general treasury of said State.

That by mesne conveyances the petitioner has succeeded to and become invested with the right, title and ownership of the said grantees to the said land, and your petitioner is seized in fee and entitled to the possession thereof.

That all of the original documents constituting and creating said grant are in the possession and official custody of the surveyor general of the United States, at the city of Tucson, in said Territory, and none of the said documents are now under the control of your petitioner. But as soon as this petition is filed your petitioner will, pursuant to law, request said surveyor general to transmit the

same to the clerk of this court. The said claim set forth in this petition has not heretofore been confirmed, considered or acted upon by Congress or any authorities of the United States.

That the petitioner is in the actual possession and occupation of all of said land, except some small portions thereof, an exact description of which cannot be given by your petitioner. The said portions are in the possession of the following-named persons, who claim an interest therein, but not under said grant: The Crittenden Land and Cattle Company, a corporation, organized and doing business under the laws and within the Territory of Arizona, and R. R. Richardson, Naber Pachico, David Choate, A. G. Carroll, A. Smith, B. Smith, C. Smith, D. Smith, E. Smith and F. Smith. The true names of the last five-mentioned persons are unknown to your petitioner.

That the following-named persons claim some interest in said grant, to wit: Santiago Ainsa, administrator with the will annexed of Frank Ely, deceased, Santiago Ainsa, trustee and administrator of the estate of Jose Juan Elias, deceased, Angel Verela, Elena Verela, Jesus Elias de Serrano, E. Smith and F. Smith.

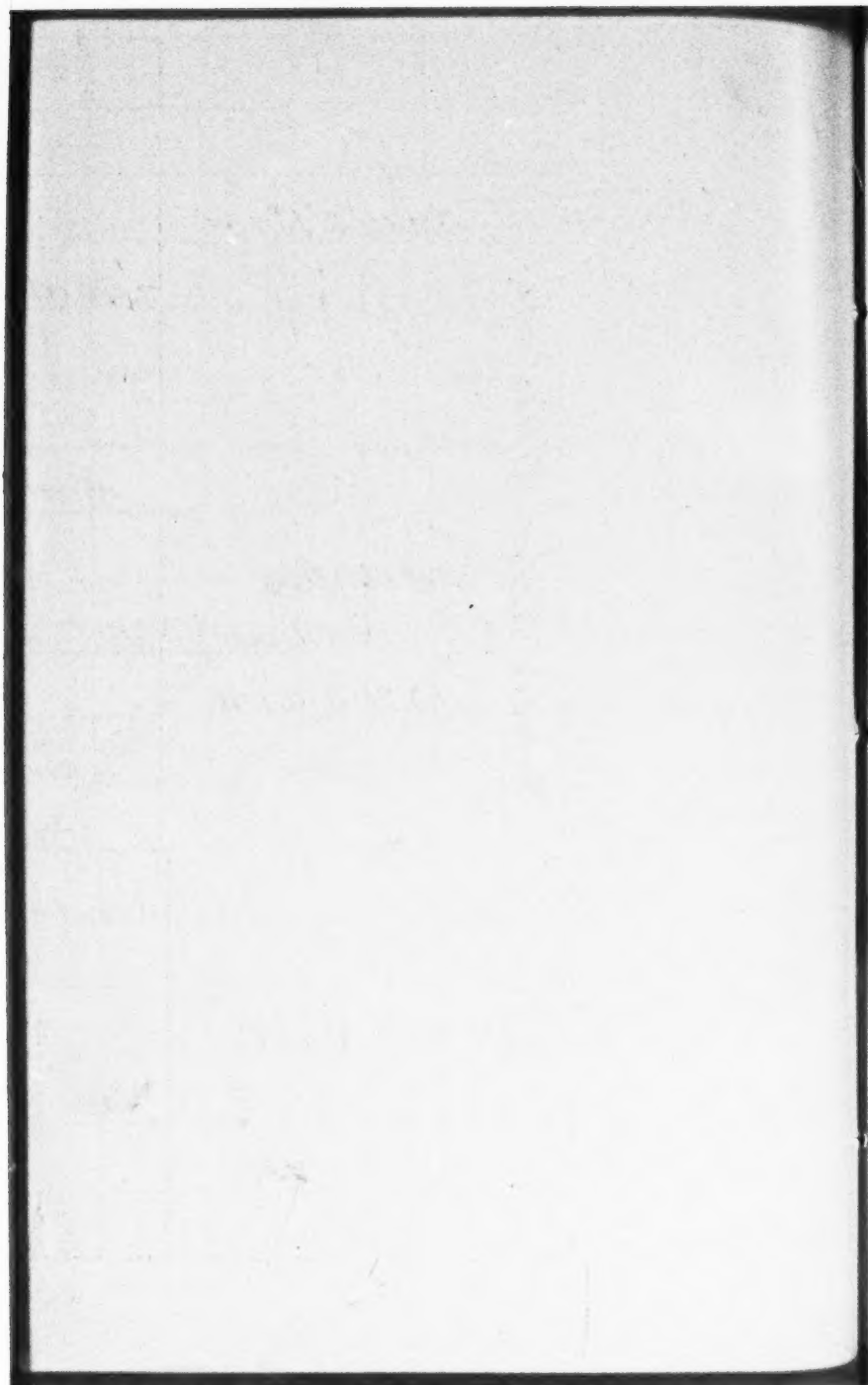
3 The following is a particular description of said land:

Commencing at a monument of stones near a hot spring, being the west center monument of said rancho, the initial point of survey of said rancho bears N. 89° 15' E. from said point of commencement, and is distant therefrom 14 miles and 60 chains, the said initial point being in a cienega on the Babocomari creek in the county of Cochise, and is about one-fifth of a mile east from the boundary dividing the counties of Pima and Cochise, and is marked by a large monument of stones; and running thence N. 45° 30' W. 5 miles and 60 chains to a monument of stones near a cottonwood tree in a little valley, being the northwest monument of said land; thence N. 89° 15' E. 14 miles and 60 chains to a monument of stones, said monument bears N. 45° 30' W. from said initial point, and is distant therefrom 5½ miles; thence N. 66° 10' E. 18 miles to a monument of stones on a high hill, being the northeast monument of said land; thence S. 4° E. 7 miles to a monument of stones on a rocky hill, said monument being the east center monument, and which bears N. 72° E. from said initial point, and is distant therefrom 13 miles and 30 chains; thence S. 5° E. 2½ miles to a monument of stones on a bald hill, being the southeast monument of said land; thence S. 74° W. 12 miles and 20 chains to a monument of stones, said monument bears S. 35° 30' E. from said initial point and is distant therefrom 2 miles; thence S. 89° 15' W. 14 miles and 60 chains to a monument of stones situate on a hill covered with oak trees, being the southwest monument of said ranch; and thence N. 35° 30' W. 2 miles to said hot spring monument, being the point of commencement; containing one hundred and twenty-eight thousand acres. A map thereof is hereto annexed.

Wherefore, your petitioner prays that the validity of said title or claim may be inquired into and decided.

ROBERT PERRIN, *Petitioner.*

CRAIG & MEREDITH,  
*Attorneys for Petitioner.*



(Endorsed :) Case No. 3½. Filed in the office of the clerk court of private land claims February 27, 1893. Jas. H. Reeder, clerk, by R. L. Long, deputy.

4 *Map of San Ygnacio del Babocomari Grant.*

(Here follows diagram marked page 4.)

5 And be it further remembered that on said day last mentioned, to wit, the 27th day of February, A. D. 1893, a summons was issued by the clerk of said court; which summons, with all endorsements thereon, is in the following words and figures, to wit:

6 *Summons.*

In the U. S. Court of Private Land Claims.

UNITED STATES OF AMERICA, } ss:  
District of Arizona,

ROBERT PERRIN, Plaintiff, } Petition Filed in the Clerk's  
versus } Office this 27th Day of Feb-  
UNITED STATES et als., Defendants. } ruary, A. D. 1893.

The President of the United States of America to the United States of America, the Crittenden Land & Cattle Co., R. R. Richardson, Naber Pacheco, David Choate, Thomas Smith, C. L. Douglass, L. Craft; Santiago Ainsa, administrator, with will annexed, of the estate of Frank Ely, deceased; Santiago Ainsa, trustee & administrator of the estate of Jose Juan Elias, deceased; Angel Varela, Elena Varela, Jesus Elias de Serrano, A. Smith, B. Smith, C. Smith, D. Smith, Greeting:

You and each of you are hereby notified that an action has been brought in said court by Robert Perrin, plaintiff, against you as defendants under the provisions of the act of Congress of the United States entitled "An act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," approved March 3d, 1891, and that a copy of the petition of said plaintiff is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action in said court within thirty days from the date of service of this summons upon you, and if you fail so to do the said plaintiff will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the court of private land claims, and the seal of the said court, at the city of Tucson, in said district, this 27th day of February, A. D. 1893, and of the Independence of the United States the 116th year.

[SEAL.]

JAMES H. REEDER, Clerk,  
By R. L. LONG, Deputy Clerk.

7 [Endorsed:] Gen. No., 3½. U.S. court of private land claims, district of Arizona. Robert Perrin, plaintiff, *versus* United States *et als.*, defendants. Summons. Filed this 29th day of August, A. D. 1893. James H. Reeder, clerk, by R. L. Long, deputy clerk. Craig & Meredith, of 328 Mont'y St., S. F., Cal., attorney- for plaintiff.

*Proof of Service.*

UNITED STATES OF AMERICA, }  
District of New Mexico, } ss :

—, A. D. 189—.

I hereby certify that I received the within writ on the 28th day of June, A. D. 1893, and that I have personally served the same upon the said defendant by delivering to —.

I hereby acknowledge service of the within writ and copy of the petition accompanying it, in the city of Santa Fé, N. M., July 13, 1893.

MATT. G. REYNOLDS, *U. S. Att'y.*

8 And be it further remembered that thereafter, to wit, on the 11th day of December, 1893, at the December term of said court, held at Tucson, in the Territory of Arizona, the following order was made, viz :

In the Court of Private Land Claims, Arizona District.

ROBERT PERRIN	{	No. 3½. San Ygnacio del Babocomari Grant.
<i>vs.</i>		
UNITED STATES <i>et als.</i>		

On motion of Matt. G. Reynolds, Esq., attorney for the United States, made in open court on this the 11th day of December, 1893—

It is ordered that the plaintiffs in the above cause file with the clerk of this court, at Tucson, Arizona, on or before January 15th, 1894, for the inspection of the attorney of the United States, all grant papers, evidence of title, and documents of whatever kind and nature which said plaintiff expect- to offer in evidence in the above-entitled cause, with copies and translations of the same; also that said plaintiffs file with the clerk of this court on or before said date, to wit, January 15, 1894, for the purpose aforesaid all original papers in his possession or under his control purporting to evidence a grant by the Mexican nation, the State of Sonora, or the Republic of Mexico to the property described in the bill of complaint herein or any part thereof, with translations or copies of the same; also that said plaintiff file with the clerk of this court on or before said date, to wit, January 15, 1894, for the purpose aforesaid a

9 duly authenticated transcript of all records and documents, the original of which are not under the control of said plaintiff, purporting to evidence a grant by the Mexican nation, the State of Sonora, or the Mexican republic to the land described in plain-

tiff's bill of complaint herein or any part thereof which you expect to introduce in evidence; also that said plaintiffs file with the clerk of this court on or before January 15, 1894, for the purpose aforesaid all original deeds, with copies and translations thereof, and mesne conveyances, with copies and translations thereof, by which they and each of them claim title through and under the original grantee to the grant described in the petition of said plaintiff.

It is further ordered that the clerk of this court transmit by mail a duly certified copy of this order to Messrs. Craig & Meredith, attorney- for plaintiff in this cause.

10 And be it further remembered that thereafter, to wit, on the 27th day of February, A. D. 1894, there was filed in the office of the clerk an answer; which answer is in words and figures following, to wit:

UNITED STATES OF AMERICA, *ss*:

In the Court of Private Land Claims, Arizona District.

ROBERT PERRIN, Plaintiff,	} No. 3½.
<i>vs.</i>	
UNITED STATES <i>et al.</i> , Defendants.)	

Comes now the United States, by its attorney, to answer to the petition filed in the above-entitled cause, — says—

As to whether the allegations contained in said petition are true, it has no knowledge or information sufficient to enable it to form a belief, and therefore denies the same, and asks that said plaintiff's claim be rejected and the petition be dismissed.

MATT. G. REYNOLDS,  
*U. S. Attorney.*

Endorsed: No. 3½, F. No. 25. Answer. Filed in the office of the clerk court of private land claims Febr. 27, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

11 And be it further remembered that thereafter, to wit, on the 27th day of March, A. D. 1894, being the 10th day of the December term of said court, 1893, held at Tucson, in the Territory of Arizona, the following proceedings were had:

This cause came on for trial. Geo. Hill Howard and Craig & Meredith, Esqrs., appeared for the plaintiff, and Matt. G. Reynolds, U. S. attorney, and Wm. Barnes, of counsel, appearing for the defendants.

The plaintiff called R. C. Hopkins, Geo. R. Roskrue, Ramon Aldareta, Isodora Castro, Francisco Romero, and Jose Roderiguez, who were sworn and examined.

The defendants called R. C. Merrill, C. Layton, Capt. Ross, P. R. Brady, H. O. Flipper, and A. A. Richardson, who were sworn and examined on their behalf.

Certain documents were introduced in evidence by the counsel



for the respective parties, which documents are clearly marked as exhibits either by letter or number, and appear hereafter.

Consideration of this case was suspended until the following day, when on said day, to wit, the 28th day of March, 1894, the court resumed its consideration of the cause, and, the evidence in this case being concluded, the argument of the case was made by the respective counsel, after which the cause was submitted to the court for decision and was by the court taken under advisement.

The evidence, both oral and documentary, offered and introduced on the trial is as follows, to wit:

12 United States Court of Private Land Claims, Sitting at Tucson, Arizona.

ROBERT PERRIN	}	No. 3½.
vs.		
UNITED STATES.		

Transcript of short-hand notes of testimony, etc., taken on the trial of the above-entitled cause, at the court-room of said court, in the city of Tucson, Pima county, Arizona Territory, on Tuesday, the 27th day of March, A. D. 1894, at 9.30 o'clock a. m., before the court (all members being present) and in the presence of Messrs. Craig & Meredith and George H. Howard, Esq., for petitioner, and Matt. G. Reynolds, Esq., U. S. attorney for said court, and Wm. H. Barnes, Esq., assistant, on behalf of the United States and sundry settlers on the grant in dispute.

Mr. Howard made a statement of the claims of petitioners.

Mr. Reynolds replied for the Government.

By Mr. HOWARD: We offer the titulo of the San Ignacio del Babacomari land grant, issued in 1833 to Captain Ignacio Elias and Dona Eulalia Elias. Do you admit that the title came from the custody of the surveyor general for this Territory?

By Mr. REYNOLDS: Yes, sir; I admit that that document is properly in the custody of the clerk of this court, having been  
13 certified from the surveyor general's office of this Territory and filed with the old claim under the law of 1854 and 1870, I believe, before the surveyor general of this Territory.

By Mr. HOWARD: The case was there presented in 1873, and this paper was presented in 1879.

R. C. HOPKINS, a witness called and sworn on behalf of petitioner, testified as follows:

Direct examination.

By Mr. HOWARD:

Q. State your name, age, and residence.

A. R. C. Hopkins; age, 78, and at present I reside in San Francisco.



Q. Will you state what familiarity you have with the archives of Sonora and grant documents of the State of Sonora?

A. In 1879 I was sent by the Department of the Interior to examine the archives in the State of Sonora, at Urez, then the capital. Since then I have been several times in that country and also to the city of Mexico and other places examining the archives.

Q. Are you acquainted with the signature of José Maria Mendoza, formerly treasurer general of the State of Sonora?

A. I am acquainted with it from having seen it in the archives a great many times. I never saw him write, but I have seen a great many of his signatures in the archives in Sonora.

Q. (Exhibiting document.) Will you examine this document, state what it is, and as to the signature there of Mendoza whether it is true and genuine or not?

A. It is endorsed "Title of grant of eight square leagues of land included in the place called San Ignacio del Babacomari, in the jurisdiction of the presidio of Santa Cruz; granted to Ignacio and Eulalia Elias."

Q. The signature at the end of that document, please state  
14 what it is and whose signature it is.

A. It is signed by José Maria Mendoza, treasurer general at that time, and Luis Carranco and Bartolo Miranda, as assisting witnesses. Those are, I think, the genuine signatures of those gentlemen by comparison; I never have seen them write.

Q. That is the signature of José Maria Mendoza on the last page, but you won't say whether it is genuine or not?

A. That is also the genuine signature of Mendoza, I think.

Q. Are you conversant with the stamped paper of Sonora at about that time from your examination of documents and your experience?

A. Yes, sir; I am familiar with it from examination, having examined a great many sheets of stamped paper at that time.

Q. Will you state if the leaves or sheets upon which this document is are genuine stamped paper of the State of Sonora at that time or not?

A. (After examining sheets separately.) I think it is; it is the stamped paper of '31 and '32.

Q. Mr. Hopkins, have you examined this titulo in this particular case and compared it with the archives in existence in the State of Sonora which contained records of land grants there?

A. Here or there?

Q. In Sonora, sir.

A. I can't say that I compared it with the matrix. I examined the matrix there and found, of course, that the matrix existed, but whether I compared it word for word I don't think I did, but I compared it generally to find that the matrix existed.

Q. How does it compare with the matrix that you examined?

A. I made a copy of the field-notes of the survey when I was in Sonora and I compared this description here in this titulo with the copy that I made and I find that it compared, with one ex-

15 ception; it compares with the copy of the field-notes of the survey in the matrix.

Q. Will you state what exception that is?

A. In this titulo the notes of the survey commence, "En el referido puesto." In the matrix following the word "puesto" are the words "una loma pelona enfrente de la cieneguita de Babacomari," which are not in this. With that exception, I think, the field-notes compare—the surveys corresponds.

By Mr. REYNOLDS:

Q. Translate that.

A. A bald hill in front of the little marsh of Babacomari.

Q. Mark in the original titulo where the interlineation is.

A. (Witness did so.)

By Mr. HOWARD (resuming):

Q. How does the document, aside from the notes of survey, which you say you compared and made a copy of, compare with the balance, to the best of your memory, of the matrix, which you say you found in the records there at Sonora?

A. I think it substantially compares with the matrix. The matrix probably contains more than this does—some formalities that this does not. I cannot speak certainly as to that, but it is substantially the same—compares historically, dates, etc.—as a record. I presume it is taken from the matrix, sir.

Q. With your experience and knowledge of these titles and examination in Mexico, as you state, could you state whether ever such a document as this titulo was issued without there being a matrix in the archives?

Objected to as leading and suggestive.

By the COURT: The proper way is to show the practice.

By Mr. REYNOLDS: There is no objection to that.

16 Q. Mr. Hopkins, are you familiar with the practice that obtained in Sonora at the date of this grant in making these grants?

A. I am more or less familiar, have been and am still more or less familiar, from recollection with the practice of making grants in Sonora at that time. Under the law of August 1st, 1824?

Q. Yes, sir; State law.

A. Yes; the State law.

Q. Will you state, more or less, what was the custom and practice in making these grants, and the methods?

A. Generally a petition was made by the denouncer, and an order to survey was issued; a survey was made of the tract petitioned for; the surveyor's field-notes of the survey were returned, submitted to the attorney general or promotor fiscal for examination, and if found to be correct the land was appraised. The land was appraised by experts first; the surveyor's report was approved if found to be correct. The land was appraised by experts according to its grade or quality, whether irrigable or grazing land or sowing land. It

was then advertised by public auction for such a length of time, and at the end of the time required it was sold at public auction. It was appraised, first, according to its grade by experts, advertised and sold to the highest bidder—at least, the petitioner would come in and bid the appraised value if it was the Government price (it could not be sold for less), and if there was no competition he would get the land and would pay the money. It was submitted in the meantime to the provisional junta de hacienda—board of Treasury—and if all proceedings were found to be correct the money was paid and the title issued. It was signed by the treasurer general, and that, with the testimonio, would go to the party interested. The original proceedings remained on file in the treasurer's office sometimes with a copy of the grant and sometimes, I think, not. That generally was the method of procedure.

17 Q. What do you mean by "copy of the grant"?

A. Copy of the titulo, or borrador, as it is called, attached to the matrix on file, but not always, and the same system prevailed in California for grants there; as to copies of grants I mean: the original grant itself being signed by the governor, and the original remaining with the expediente on file—or matrix. I think that the custom observed by the Spanish government was, more or less, the same without much change, except the change of officers, the treasurer general making the grant instead of the governor intendente.

Q. With reference to the notices of sale, when the sale would be made, what do you remember about the method pursued in reference to these grants made at that time?

A. They were, I think—my recollection is they were published for thirty days, as was the custom under the Spanish government; I don't know whether they were in every case or not, but they were sometimes, I know, and at the end of thirty days they were sold to the highest bidder.

Q. In your examination of this grant in Sonora and of the archives there and borradores, did you see other grants; and, if so, about how many more or less than the one before you now?

A. I saw a great many. Of course, I examined the expedientes in the archives going back to '61. I went through the list of them, but, of course, I did not read them all. I only carefully examined such as I supposed were within the limits of the Gadsden purchase, of course. That I could not certainly determine, but could tell more or less.

Q. What was the custom in most of the grants you examined with reference to this method of procedure of sale and notice?

18 A. Similar to what I have stated here, more or less so. Of course, a number of grants were commenced under the Spanish government, title to which was issued under the Mexican government—several, at least.

Q. Did you find any book of records in the State of Sonora during your examination in the archives?

A. There was a book called Libro de Toma de Razon—covering a period from 1832, I think, down to, perhaps, 1850, more or less; I for-

get the date exactly—in which grants were registered—grants that were issued during that time.

Q. Does this title which you have here appear, from the entry on the last page but one, to have been entered on that book of records?

Objected to because the instrument shows for itself.

By the COURT: That is a matter which appears on the face of the instrument itself.

Q. Did you see that book of Toma de Razon yourself?

A. Yes, sir.

Q. Did you find any entry in it with reference to this grant?

A. I found a corresponding entry on that book, corresponding with that note of entry there (referring to document).

Cross-examination.

By Mr. REYNOLDS:

Q. You say you have examined a great many titles—particularly titles with reference to lands lying within the Territory of Arizona, were they not?

A. All that I examined carefully were; yes, sir.

Q. You make up your opinion as to the system adopted in the granting of lands by virtue of the recitals and contents of the various grants that you examined and located in Arizona?

A. Yes, sir; at that time; during that period.

19 Q. You did not examine the grant with reference to the law of May 20, '25, of the State of Sonora, did you?

A. Well, somewhat with reference to that. Of course, I was aware of that law.

Q. Do you remember that law?

A. I remember it; yes, sir. I remember the terms of it.

Q. Do you know what its requirements were?

A. I do not now remember distinctly. You mean the regulations of 1825?

Q. I mean the law of the State of Sonora made May 20, 1825, with reference to the disposition of public land.

A. I remember some, but not all.

Q. Did you find anything in there with reference to thirty pre-gones?

A. I don't recollect that I did. I haven't seen that law, I think, for 12 or 15 years.

Q. Do you remember of examining the law of August 4, 1824?

A. Yes, sir.

Q. And August 18, 1824?

A. The law of colonization? Yes, sir; I remember that.

Q. Did you find anything about the manner in which sales should be made of these lands?

A. No, sir.

Q. Nor by whom sales should be made?

A. No, sir.

Q. Where is the first place you ever found any authority for making sales after the independence of Mexico?

A. I think the regulation of 20th of May, 1825.

Q. By the State of Sonora?

A. Yes, sir.

Q. Does that conform to it?

A. Well, so far as the—I do not recollect distinctly the requirements of that law now as to the 30 pregones.

Q. Well, your best recollection whether it calls for 30 pregones or not?

A. I don't think it does.

20 Q. You think it does not?

A. I don't think it did.

Q. Now, you say that you compared that document with the expediente on file at Hermosillo?

A. At the time that I made the examination there?

Q. Yes, sir.

A. Not carefully. I examined no more than to find that it was substantially correct.

Q. Did you examine it carefully enough to see that the report of survey is the same in both instruments?

A. Yes, sir; I made a copy of that. I copied the field-notes, so as to know the location.

Q. The survey on which the order of the promotor fiscal was made?

A. Yes, sir.

Q. And you say it was correct, with the exception which you make?

A. Yes, sir; I learn that now from the examination that I now make. I did not copy any other portion of the matrix.

Q. Did you translate this document for these gentlemen?

A. Yes, sir.

Q. Is the translation that they have filed here your translation?

A. In connection with Mr. Howard, I have revised the translation. There were a good many errors in the translation that I had shown me, the printed one, and I made some corrections in that.

Q. Did you ever make a translation for the surveyor general's office?

A. Yes, sir; I think so.

Q. Is your translation on file there?

A. It is there, I think. I guess it is.

Q. You say that that is the stamped paper used in Sonora at that time?

A. It is, I think.

Q. The only means you have of knowing that fact is the general appearance of it?

A. Yes, sir; by comparison. That is all.

Q. It looks like it?

A. Yes, sir; it looks like it.

21 Q. In your examination grants and title papers with reference to land grants, is it not the rule that you find a

copy of the patent attached to the expediente and thereby making a complete matrix?

A. In every case.

Q. Is it not the general custom?

A. I don't know that it is. There are many exceptions.

Q. We have had several here?

A. Yes, sir.

Q. If the proceedings were regularly done and taken, I mean?

A. I suppose, to make the record of the matrix complete, there should be a copy attached to it.

Q. That would be regular?

A. Yes, sir; but, of course, it is not always done. To make it absolutely complete, I think that would be required.

Q. Now, again, the titulo or testimonio—such a document as this—should be a complete copy of the expediente, should it not, with the patent attached to it—the original patent attached to it?

A. Well, that I can't say, because I think that in a great many cases the testimonio is made up and some of the formalities left out.

Q. As in this instance?

A. Yes, sir.

Q. I mean to make it regular?

A. To make it absolutely a complete copy, it should contain everything; but whether the law required that I don't know.

Q. I am not asking for your legal opinion, but from your observation and all you gathered as an expert for many years?

A. I guess if it purports to be a copy, it should be a copy.

Q. I am not asking you what it purports to be now.

A. No.

Q. Of course, it ought to be what it purports to be, but to be regular and in due form and a complete testimonio or titulo it should be a copy of the expediente with the original grant attached?

A. Well, if it purports to be a copy of the record, it should be.

22 Q. I am speaking now—if you were endeavoring to make one of these up regularly—if you were called upon to make up a title paper regularly and in due form, would you not copy the entire expediente and then attach to it the original grant?

A. That depends on circumstances.

Q. Well, I am asking you if you were making up a regular title paper.

A. It depends on the custom, I suppose, of the place where it was done.

Q. From all your observation and all the knowledge you have obtained, if you were called upon to make up a regular title paper, I ask you whether you would not make up a copy of the expediente and attach the original grant to it?

A. I might make only an abstract of the original proceedings.

Q. If you were undertaking to make a regular (interrupted)—

A. That is relative, you know. If made in correspondence with custom, it would be regular, I suppose. I suppose in making up an abstract of title you ought not to copy all the deeds in it. Now,

the testimonio commences with something not found in the matrix at all.

Q. That is merely preamble.

A. It is in the document made up from the record.

Q. Didn't you testify in the Sonoita case that in order to make a titulo regular you would make an entire copy of the expediente and attach to it the original title paper?

A. If I was to make an entire copy, of course.

Q. I am not talking about that, but to make a regular title paper to deliver to the party.

A. I may have said so. If I found that to be the custom to do it that way, I would do it, you know.

Q. All you know about the custom is (interrupted)——

A. From what I have seen there—yes.

23 Q. And recitals there in documents with relation to land grants in Arizona?

A. Yes, sir; and perhaps other grants, too. Of course, the system in California was very much the same. The title they gave to the party was made up from the archives; not an exact copy.

Q. That was under the law of California and regulations?

A. Yes, sir.

Q. And not made under the laws of the State of Sonora of 1825?

A. Not at all, but made according to the customs of the country in making up records. They attached there a borrador to the expediente sometimes, and sometimes not.

Q. And sometimes they had a grant when you could not find any record of it at all?

A. Sometimes no matrix at all.

Q. You found a good many of those grants in your investigation signed by the officers, antedated, and shown to be clearly fraudulent?

A. Yes, sir; several.

Q. And when those officers went out of office they went to making grants, didn't they?

A. Several; yes, sir.

By Mr. HOWARD: We now ask leave to file amended translations. They are simply showing some differences in courses. We have the translations showing exactly what was given in the titulo itself, and therefore we make the amended translations showing exactly what was in the grant titulo here, and we ask leave to file them in place of the others on file now.

By Mr. REYNOLDS: We have not examined them and therefore do not know whether they are correct or not. We reserve the right to object to them if on examination they are found incorrect. If they agree with our translations, there will be no objection.

Redirect examination:

24 Q. Mr. Hopkins, do you know whether Santiago Espinosa, who testified before the surveyor general in the case there of the Babacomari, is alive or dead?



A. I have understood that he is dead; I do not know it of my own knowledge.

Q. Do you know whether Francisco S. Leon, the witness who testified before the U. S. surveyor general in the case of the Babacomari land grant pending there, is alive or dead?

A. I have understood from his friends that he is dead.

By Mr. HOWARD: We offer the evidence of Francisco S. Leon, taken before the surveyor general in the investigation of this matter, as well as that of Santiago Espinosa, as being now both dead. We offer this evidence for what it is worth. It is certified as a copy from the surveyor general's office.

We also offer the sketch map made by George J. Roskruge as being more or less correct, showing what this grant would contain provided it was surveyed according to the natural calls set forth in the titulo.

By Mr. REYNOLDS: We object to counsel introducing a map and stating that it is correct with reference to natural objects. I don't know how he can get it in the case as evidence without first proving its correctness.

By Mr. HOWARD: We offer it simply as an idea—a sketch map.

By the COURT: It may go in. It may afford some illustration. It has no verity, by any means; of course, it does not prove itself.

By Mr. HOWARD: Oh, no; we will offer evidence with reference to it in course of the trial. I now offer documents showing title in claimants, with abstract of same.

By Mr. REYNOLDS: If we have any objection, we will make it on the argument.

25 By Mr. HOWARD: We now offer the evidence of Juan Robinson, taken in the Algodones case, as to the laws and customs of Mexico in making grants. Mr. Robinson is beyond the jurisdiction of the court, and we cannot get him here.

By Mr. REYNOLDS: We very much object to a proceeding of this kind. If he wanted to take Mr. Robinson's deposition as to his opinion of the law in this case, he could have done so in the proper way, if he considered him eminent enough to justify it. It can have nothing to do with this case.

By the COURT: Of course it is like any other deposition; in order to introduce it here it must have been taken between the same parties and on the same issue.

RAMON ALDARETTA, a witness called and sworn according to law, testified through the medium of the official interpreter as follows:

Direct examination.

By Mr. HOWARD:

Q. State your name, age, and residence.

A. Ramon Aldaretta; I am sick, and I can't talk very loud—very well. I am 78 years old, and I live at San Xavier.

Q. How long have you lived in this Territory?



A. I lived here before every American that is here. I am one of the old persons belonging to this place. I am more of an American than all the rest.

Q. Did you know the place of San Ignacio del Babacomari?

A. No, sir.

Q. Do you know the place called the Babacomari?

A. Yes, sir.

Q. Where is that from here—where with reference to Tucson?

A. It lies at the San Pedro river.

26 Q. Is there any stream of water at this place of Babacomari?

A. Yes, sir.

Q. What is the name of it?

A. The Rio Babacomari—the San Pedro river.

Q. Into what does the Babacomari empty?

A. In which direction?

Q. East.

A. To the side of the Agua Prieta?

Q. Into what does it empty? Where is the mouth of the Babacomari?

A. From Nogales on, at the end of the Sierra de Huachuca.

Q. On what stream, if any, is Nogales?

A. On the same river of the Babacomari.

Q. How far is this Nogales from the San Pedro river?

A. It is the same river.

Q. Did you know Don Ignacio Elias?

A. Yes, sir.

Q. Did he have any ranch or property in this country?

A. I knew Don Rafael Elias.

Q. Did they have any ranch property in this country?

A. He was a man that had a good deal of live stock at Babacomari.

Q. Did he have any settlement there?

A. Had a big ranch.

Q. Of what did it consist?

A. For cowboys, servants, that lived there.

Q. Any houses or corrals there?

A. Many of them—houses and corrals also.

Q. Did Don Ignacio Elias have any cattle there?

Objected to as leading.

Q. Did you know Don Ignacio Elias?

A. I knew Don Rafael Elias.

Q. Well, do you know whether Don Rafael Elias had any brothers?

A. He had, but I didn't know them. I only knew Don Rafael Elias. He supplied Fronteras and Tubac with me from his stock.

27 Q. Do you remember about what time the ranch was abandoned and for what cause?

A. On account of the Apaches.

Q. About what time—do you remember?

A. It was many years ago. I do not remember the number of years.

Q. Do you know the range of mountains called the Santa Rita mountains?

A. That which lies at the front of San Xavier; yes.

Q. Do you know a place called at that time Ojo de Caliente?

A. I was disputing his cattle at Altar; his stock there. It is not a hot spring; it is a lukewarm body of water at the place where the volcano is at present. That is the Agua Caliente. They have changed the names that the ranches formerly had.

Q. Didn't I understand you to say Fort Buchanan instead of "volcano"? Near what place did you say the warm spring is?

A. At the place where Fort Buchanan is. We cannot speak those words well.

Q. Do you remember and can you state where those cattle were accustomed to range on the Babacomari?

A. They came down from the mountains of Santa Rita and from the Canelo (Brown mountain).

Q. About how old were you when you first saw this Babacomari ranch that you speak of?

A. About 50 years old.

Q. How big were you when you first saw the Babacomari ranch?

A. Oh, I was 14 years old.

Q. Was any one living there at the Babacomari when you first saw it?

A. There was Santa Cruz del Presidio and the old pueblos.

Q. Who was living there, if any one, at the Babacomari when you first saw it?

A. A major domo, an uncle of this young man that now comes here; he was the major domo of Don Rafael Elias.

Q. What man that comes here do you speak of? What man do you speak of whose uncle was major domo?

A. Another gentleman who is down here, Mr. Castro.

Q. What is his first name?

A. Isodoro Castro.

(Cross-examination declined.)

28 ISODORO CASTRO, a witness called and sworn on behalf of the petitioner, testified through the medium of the official interpreter as follows:

Direct examination.

By Mr. HOWARD:

Q. What is your name, age, and residence?

A. Isodoro Castro; I am 64 years old, and I live at Los Reales.

Q. In this county?

A. Yes, sir; it is now eight years that I stayed at San Xavier.

Q. How long have you lived in this neighborhood?

A. I have been here always. It is about eight years ago that I went away from here to San Xavier.

Q. Do you know the Babacomari ranch?

A. At that time my parents brought me when I was very young to that place. I was so young that my father had to take me on his horse.

Q. Was any one living there when he took you on his horse there?

A. Yes, sir; my father lived at that place; he was working at that place, and an uncle of mine was major domo of the place in those days.

Q. What was there at this place?

A. At that time there was a large number of stock and horses. I saw them at that time.

Q. Was anybody living there?

A. There were some people there then, yet.

Q. Where were they living?

A. They were living there, but I can't state anything further, because I was young then—small.

Q. Camping out or living in houses?

A. I can't state as to anything about that time because it is some years ago.

Q. Haven't you been there since the first time you went there?

A. No, sir; I haven't returned to that place since that time.

Q. You say your uncle was major domo there; what was your uncle's name?

A. Lonjino Castro; he was major domo at that time.

29 Q. Did you know Captain Ignacio Elias in his lifetime?

A. I don't know whether he was the old man who was called Don Rafael Elias as I heard him called at that time.

Q. Then you do not know for what Elias, your uncle, was major domo?

Objected to as stating or suggesting a conclusion and objectionable for both reasons.

Q. For whom, if you know and remember, was your uncle major domo?

A. No, sir; I don't know. I know that he worked as major domo for the Eliases, so much so that my father was used to bring cows from there to here for family use.

Q. Your father, you said, worked on this ranch?

Objected to as leading.

A. Yes, sir; he worked there.

Q. For whom did your father work on this rancho?

A. He worked there.

Q. Do you know for whom?

A. I cannot state that. I cannot state all what I saw at the time when I was still very young.

## Cross-examination.

By Mr. REYNOLDS:

Q. Do you know where Fort Buchanan is?

A. No, sir.

Q. Do you know where Fort Buchanan was?

A. I know that Fort Buchanan was on this side; it was the fort where they settled first.

Q. Who settled first?

A. I don't know. I saw it peopled already.

Q. Was that the place you went to?

A. Yes, sir.

Q. Where you lived with your father when he was working for the major domo, was it?

A. No, sir; I was here in town.

Q. Where did you live down on the Babacomari at the time your father worked for the major domo?

A. I didn't live there at any time.

30 Q. Where was the major domo living then?

A. He was there at the ranch.

Q. Where was that?

A. It was what they call the Babacomari. I cannot state anything further than that because I was small.

Q. And never have been back there since?

A. No, sir.

Q. How old are you?

A. I must be about 64 years old.

Q. How old were you when you were there?

A. I must have been about 13 or 14 years old. I remember that my parents took me there when I was very young.

Q. Did they stay there any length of time?

A. No, sir; he stayed there a short while because the Indians already would not allow us to stay.

Q. Did you live on the river?

A. No, sir; I have said that I did not live there. I just went in and come out.

Q. Well, where the major domo lived, was that on the river?

A. No, sir; I don't remember anything more. I cannot state anything more.

Q. Did the river run east and west or north and south?

A. I have said that I can't say anything more about that at that time. I was very small when I was taken there by my parents.

Q. Was there running water near the houses where they lived?

A. I saw running water there and I passed it, but I didn't pay attention to it.

Q. Do you know which way it run?

A. I saw it running, but our parents did not allow us to go out on account of the Indians.

Q. How many people were there?

A. There were some there.

Q. How many?

A. There was quite a number of people there.

Q. As many as a hundred?

A. I can't state there were a hundred of them because I didn't pay much attention, but I can state that there were about twenty men.

Q. You cannot locate to me, then, where these people were  
31 on the Babacomari river, can you?

A. No, sir.

Q. Near the mouth?

A. Yes, sir. I have said that I can't state anything further.

Q. Do you know where the San Pedro river is?

A. They have named this river here San Pedro now.

Q. Do you know where the name of the San Pedro river was then,  
when you were a boy 13 or 14 years old?

A. No, sir; I can't state then, as I was very young, what the river was at the time when I have said that I was taken there by my parents on horseback.

Q. Did you ever go down on the San Pedro river when you were  
a young man or boy?

A. No, sir; I only crossed it en route to other places.

Q. What other places?

A. To the other side.

Q. What other side? Where were you going?

A. I remember that we would cross the river when we went to the place.

Q. Coming from where?

A. From here.

Q. Where were you coming from or going to?

A. I haven't gone but that time which I have stated, and at that time I was young and didn't pay much attention.

Q. Where were you coming from at the time you happened to be there?

A. I haven't been but from here to there—that is, I went from this place.

Q. Did you go no further?

A. No, sir.

Q. Did you cross the San Pedro river going down there?

A. I remember that we crossed the river there.

Q. You crossed the San Pedro river going down, and as you came back you crossed it coming back?

A. I didn't pass it. I say when my parents did come there I was there, crossing the river.

Q. And you crossed it with your parents when you came back?

32 A. No, sir. I can't state any further; I can't state any further what I remember, having been taken there by my parents when I was young.

Redirect examination:

Q. What river did you cross when you went from here to the Babacomari with your parents, if any?

A. I don't know which river.

Q. Do you know the San Pedro river now?

A. I haven't returned there.

JESUS NUNEZ, a witness called and sworn on behalf of the aforesaid petitioner, testified through the medium of the interpreter as follows:

Direct examination.

By Mr. HOWARD:

Q. State your name, age, and residence.

A. Jesus Nunez; I am 53 years old, and I live at San Xavier.

Q. Where have you usually lived in this country?

A. I am a native of this Territory.

Q. Did you know the Babacomari ranch?

A. Yes, sir.

Q. How large were you when you first knew it?

A. I was about 13 or 14 years old.

Q. Were people living there when you first knew it?

A. I knew Don Rafael Elias—so he was called—and the vacqueros (cowboys).

Q. Did you know Dona Eulalia Elias?

A. No, sir.

Q. Did you know Captain Ignacio Elias?

A. I knew him.

Q. Where did you know him?

A. I knew him at the ranch. He probably came on some business there. I knew him there. I saw him there.

Q. What were they doing there on this ranch—these people that you saw living there?

A. They were taking care of their stock and their horses. They had large numbers of them there.

33 Q. Who had this stock—this large number of horses and cattle there?

A. Probably the Elias people had them there. I knew the major domo who had them there. His name was Lonjino. He is dead.

Q. Lonjino what?

A. Lonjino Castro, the brother of the father of this man by the name of Castro here.

Q. Do you know the Ojo de Augua Caliente?

A. Yes, sir; it is what they call the present Ft. Buchanan; that is the Auga Caliente.

Q. Do you know the Santa Rita mountains?

A. Yes, sir.

Q. How near to the Santa Rita mountains is the Ojo de Auga Caliente?

A. About three leagues. Santa Rita lies that direction (indicating) and the Auga Caliente the other.

Q. Do you know where the place called the cienega of José Franco is?

A. Yes, sir.

Q. How is that situated with reference to the Santa Rita mountains?

A. In front. It is opposite to it. Santa Rita lies in this direction (indicating) and the cienega on the other.

Q. How far is the cienega of José Franco from the Agua Caliente, more or less?

A. I think it is about 6 or 7 leagues.

Q. How were the Apache Indians about the time you first went to this grant. Were they at peace or war?

A. They were on the warpath. They were all very hostile.

Q. How long afterwards did they remain on the warpath and hostile?

A. For very many years, until I was already quite old; till the time we made this campaign to the Aravaipa.

Q. Do you know about, more or less, when this rancho of the Babacomari was abandoned by the people that were there? First do you know whether it was abandoned by these people that you have spoken of?

A. No, sir. They abandoned it for a time, but when they had to deliver some cattle they went back again. The owners had to deliver some cattle or stock, because there was quite a large  
34 number of stock and the herds would come quite near to this place—right near.

Q. Where were the people living on the Babacomari who had these cattle?

A. At Arispe.

Q. Where did the major domos and the vacqueros live?

A. I believe they lived here in Tucson, and from here they would go to that place.

Q. Did they have any ranches on this property?

A. Yes, sir.

Q. Who lived on those ranche houses?

A. The major domo lived in them.

Cross-examination.

By Mr. REYNOLDS:

Q. Do you know where the old Camp Crittenden is?

A. I don't know which is Crittenden; maybe it is Buchanan.

Q. Do you know where Camp Crittenden is?

A. I don't know them by their new names.

Q. Do you know where old Ft. Buchanan was?

A. Yes, sir.

Q. That was down there then, wasn't it?

A. Yes, sir.

Q. That was there the first time you were ever there, wasn't it?

A. No, sir; the fort was built afterwards.

Q. How long afterwards?

A. I don't know about how long. At the time when the companies came in they built that fort.

Q. How far is that from where you say the major domo lived?

A. I have said that it is about 6 or 7 leagues.

Q. Which way?

A. To the east.

Q. When were you down there last?

A. The last time I was there was about 18 years ago, but there were no more people there. At the time when I went to what is now Los Nogales, what used to be called Los Nogales belonged to the Eliases, but now is called Charleston.

35 Q. How old do you say you were?

A. I was already grown. It was about 18 years ago.

Q. How old are you?

A. I am 53 years old.

Q. You were about 13 or 14 years old when you were down there at the major domo's?

A. Yes, sir; I was very young when I went.

Redirect examination:

Q. What soldiers or companies built Ft. Buchanan as you state?

A. Companies belonging to the United States Army; Capt. Fritch. I saw him at Tempe some time ago.

Q. How far do you say this Ft. Buchanan was from the old ranch-houses at the Babacomari?

A. It must be about twelve leagues. The cienega of Padre Franco is about six or seven leagues.

Q. Have you been to this warm spring that has been testified about?

A. Yes, sir.

Q. Is the water hot or warm?

A. No, sir; it is not warm; it is lukewarm. It can be drunk, because it is not so very warm.

Q. Is there any other warm spring in that country that you know of?

A. No, sir.

Q. Do you know the country pretty well around there? Have you ridden around there?

A. Yes, sir.

Recross-examination:

Q. You say you have been all over that country?

A. Of the Agua Caliente?

Q. Yes; and all around over this ranch.

A. Yes, sir.

Q. And never saw but one hot spring?

A. Yes, sir; I have seen others, but to this other side.

Q. Which other side?

A. To the Pinal side.

36 Q. I am talking about the Babacomari. I am not talking about the Pinal mountains.

A. You asked me whether I knew any more hot springs and I told you I do.



Q. Do you know any other hot springs down on the Babacomari ranch?

A. No, sir.

Q. You have been all over it?

A. I have been all over there; yes, sir.

Q. Do you know where that cienega is?

A. Yes, sir.

Q. Do you know where the Mustang mountains are?

A. Yes, sir.

Q. How far is that from the cienega?

A. That mountain lies between the Babacomari—the Quihui and the cienega of Padre Franco; it can be seen from this place.

Q. What can be seen from this place?

A. It can be seen from everywhere, the mountain.

Q. I am talking about the Mustang.

A. Well, the Sierra del Mustang; yes.

Q. Can you see them from here?

A. Yes, sir; of course.

Q. Then the cienega that you speak about is near that mountain that you can see from here?

A. Yes, sir.

Q. On the other side?

A. The cienega lies on this side and the Babacomari lies on the other side, and the mountain of the Mustang can be seen from this place. You can see the Ojo de Davis from there.

Q. Is the cienega of Padre Franco on the other side of the spring of Davis that you speak of?

A. Yes, sir.

Q. Which is the nearest, the cienega of Padre Franco or the spring of Davis?

A. The spring of Davis at the place Andrade is, and the cienega is the other side.

Q. And where are the Mustang mountains? Are they near the Davis spring? Which is the nearest this place, the Davis spring or the Mustang mountains?

A. Davis's spring.

37 Q. Do you know where the cienega of Babacomari is?

A. Yes, sir.

Q. Where is the cienega de Babacomari from the old ranch-houses there?

A. It lies near. About two or three hundred yards from it.

JOSÉ RODRIGUEZ, a witness called and sworn on behalf of the aforesaid petitioner, testified through the medium of the official interpreter as follows:

Direct examination.

By Mr. HOWARD:

Q. What is your name and age?

A. José Rodriguez. To get at my age better, I will say I am fifty

plus 25 years more. I was born and raised here. I am quite young yet.

Q. Where do you reside, Mr. Rodriguez?

A. I live here. I have been living here all my life.

Q. Did you know Capt. Ignacio Elias in his lifetime?

A. I knew General Elias—Don José Maria Elias. Don Rafael Elias was the owner of Babacomari, and Gen. Elias was the commander at Arispe.

Q. Who did you say was the owner of—San Pedro, you mean?

A. Yes; San Pedro. Don Rafael Elias.

Q. Did you know the Babacomari when you were a young man?

A. Yes, sir; I knew it very well.

Q. Who was living at the Babacomari when you first knew it?

A. At that time nobody would live there at San Pedro or Babacomari or other settlements nearest. They would gather under an escort. The vacqueros would not live there unless they would have their families, and would not do so unless they had an escort.

Q. What was an escort needed for?

38 A. To supply all the presidios with meat, which were the names I have just mentioned. To supply them with meat for their campaigns against the Apaches.

Q. Were there at any time you were on the Babacomari as a young man any cattle there?

A. All the time since I knew the place there was a large number of cattle there.

Q. What valley did you say?

A. Upon all the valleys there. The valley of the Babacomari and the valley of the San Pedro and all those valleys.

Q. Did you know to whom the cattle belonged that were on the Babacomari?

A. All that property was only known to belong to the Eliases.

Q. Any particular Elias or the Eliases?

A. No, sir; to Elias.

Q. Do you know the ranch-houses on the Babacomari?

A. Yes, sir.

Q. Is there a stream of water on the Babacomari?

A. Yes, sir; at Babacomari there is.

Q. How were the ranch-houses with reference to the stream? How near to it are they?

A. About 150 yards. The ranches are in that position (indicating) and the water below it.

Q. Do you know the cien-ga of the Babacomari?

A. Yes, sir.

Q. How does that lie with reference to these houses?

A. The cienega is below and the rancho is on top of the mesa, and the water is in the other direction.

## Cross-examination.

By Mr. REYNOLDS:

Q. Didn't you say awhile ago that those ranches were all abandoned from your earliest recollection except that with an escort sometime- they would go down there and round up some cattle?

A. Yes, sir; I did say so, meaning, when I say abandoned, the people most of the time didn't live there unless when the interested party himself would come in to round up cattle to take to  
39 Guaymas and other places, and then the people would come in there with their women.

Q. How long would they stay?

A. They stayed one month, or two; they could not stay longer. Frequently the owner would come in with escorts of 100 men to bring cattle out.

Q. Were not the cattle moving all along that country in all the valleys?

A. Yes, sir; there were cattle all over there, and they would collect the tame cows for milking purposes and for domestic uses.

Q. And cattle over on the Santa Cruz were the same way, too?

A. I want to know if you have reference to the presidio of Santa Cruz?

Q. I am talking about the Santa Cruz valley and river.

A. We haven't known by the name of Santa Cruz except a place which runs above the Agua Caliente. You have given that name to other places.

Q. You knew Babacomari by the name of the creek or river down there, didn't you?

A. Yes, sir.

Q. And Sonoita by the name of Sonoita creek?

A. Yes, sir.

Q. And San Pedro by the name of San Pedro river or creek?

A. Yes, sir.

Q. And Santa Cruz by the name of the Santa Cruz river?

A. Yes, sir.

Q. And cattle roamed indiscriminately all over them, didn't they?

A. Yes, sir; there were ranchos upon that tract and there were houses. Santa Cruz was there, and from there when the Apaches drove them away from this place they changed to the other place on the San Pedro.

Q. You mean the Santa Cruz was changed to San Pedro?

A. No, sir; when the old presidio of Santa Cruz was changed they went to what is now called Santa Cruz—the new Santa Cruz.

Q. You are talking about the old town of Santa Cruz down  
40 by Fairbanks, that has been moved up since?

A. Yes, sir.

Q. Down by La Noria now?

A. Yes, sir; that is the one I am speaking of.

Q. I am not talking about towns. I am talking about streams of water.

A. Well?

Q. All those cattle roaming all over that country bore the Elias brand, didn't they?

A. All of them; yes, sir.

Q. Wasn't anybody else in this lower country having any cattle but Elias, was there?

A. No, sir; I didn't know anybody else except Elias.

Q. And they went all over the whole country, didn't they?

A. They went as far as Tres Alamos, and went all over the country.

Recess till 1.30 o'clock p. m.

GEORGE J. ROSKRUGE, a witness called and sworn on behalf of said petitioner, testified as follows:

Direct examination.

By Mr. HOWARD:

Q. What is your name, age, and residence?

A. George J. Roskruge; 48 years old; residence, Tucson, Arizona.

Q. What is your profession, Mr. Roskruge?

A. Surveyor.

Q. How long have you lived in this country, Mr. Roskruge?

A. I have been in Pima county about twenty years.

Q. In the course of your professional duties have you made surveys of Mexican private land claims or grants?

A. Yes, sir.

Q. Did you at any time, and, if so, about when, make an examination of the Babacomari land grant?

A. Yes, sir.

Q. State what kind of an examination you made—whether on the ground and how.

A. I went on the ground for the purpose of making a regular chain survey of the Babacomari grant, and when we went  
41 down to look for the centre monument at the cienega the man that lived there came out and said before I should make a survey of that grant I should walk over his dead body, and I then come to the conclusion that I better not make a survey with the chain, for I didn't propose to get killed then. The court will understand that I have been threatened and damned and cursed for making these surveys; not only for private individuals, but for the Government. I have had rather a hard row to hoe. When they want to get rid of a witness down there they kill him. When I went to make a survey of the San Rafael I took the precaution to make my will the day before. I never expected to come back alive. This man came out with a revolver and said I would have to walk over his dead body, and that means that he would either kill me or you kill him. I didn't propose to kill him and I didn't propose to have anybody kill me particularly, and I therefore went there and did the best I could.

Q. You did not make a regular survey?

A. No, sir; but I went there for the purpose of making a chain survey.

Q. What documentary evidence, if any, did you have with you when you went there to make the survey of this ground?

A. I had a certified copy of the expediente.

Q. Where did you get that certified copy?

A. Mr. Cameron had it.

Q. Certified by whom, if you remember?

A. I think by the surveyor general.

Q. Then, when you made this examination of this grant what was your method in making it, Mr. Roskruge?

A. Well, sir; as I tell you—

Q. I am speaking of the ground.

A. I went down to the centre to look for the monument. Of course I quit looking for the monument. I believe the wife of this man fired a load of shot in the vicinity of one fellow down  
42 there and had a trial for it in Tombstone.

Q. That was the time they killed a snipe on the fence?

A. I believe something about that; yes.

Q. What did you do then?

A. I left that spot and we went then and traveled straight towards (interrupted)——

Q. From where?

A. From about that cienega—about where the centre monument would be—right straight towards the hot spring, and went right over to what is now called Monkey spring.

Q. What course did you pursue in going there?

A. Pretty near a due westerly direction we went.

Q. Did you have the expediente with you then or a copy of it?

A. I had a copy of the expediente; yes, sir.

Q. Is that hot spring generally in that west course, as you went, from the locality of the centre monument?

A. Yes, sir; as straight as we could go to the hot spring.

Q. What did you find at the hot spring?

A. We found a warm spring there, and near it we found an old monument of stones right on the ridge overlooking the valley and facing the Santa Rita mountains.

Q. What kind of a monument do you think that was, more or less? Describe it.

A. The monument that I found there was an old monument, of course; all gone down, you understand—merely an old pile of stones—that was what it was. (Producing photograph:) There is the monument. After photographing this monument we lay down, for fear some fellow would fire a shot at us—dropped down like a lot of thieves. There (exhibiting photograph) is the monument towards the hot springs, looking towards the east. This is the west center monument at hot springs looking towards the southeast.

Said photograph was thereupon marked as an exhibit, "1."

43 Q. What did you do after you got to the old hot spring?

A. From there we went up what is called the Adobe cañon, which is about 5 miles and 60 chains, and there we found a big cottonwood tree in a little valley, right in the foot-hills of the Santa Rita mountains, that is probably five feet in diameter. In this photograph two men are shown with arms extended in front of the tree to show the size of the tree.

(Said photograph marked as an exhibit, "2.")

Q. Is there any other cottonwood in the neighborhood of this cottonwood tree?

A. No, sir. I went down that valley, and that is the only one. Here is another photograph of that cottonwood tree.

Q. One will do.

A. Very well.

Q. Then what did you do after you left that cottonwood tree?

A. Then we ran in a southeasterly direction to the top of a high hill, and on top of that high hill we found an old monument of stones, and from the top of that hill you could see the top of this cottonwood tree, looking over this spring.

Q. They were in line, were they?

A. Very nearly in line; yes, sir.

Q. Have you photographs of that monument on that hill?

A. (Producing photograph.) "Southwest corner monument, looking towards Santa Rita mountains."

(Said photograph was marked as an exhibit, "3.")

Here is a photograph of the hot spring.

(Said photograph was marked as an exhibit, "4.")

Here is a photograph of the hot spring, showing hill whereon is southeast corner monument.

(Said photograph was marked as an exhibit, "5.")

Here is photograph of little valley at foot of Santa Rita mountains, showing cottonwood tree, which is northwest corner.

(Said photograph was marked as an exhibit, "6.")

44 Here is west centre monument at hot spring, looking up cañon toward cottonwood tree, in little valley, showing Santa Rita mountains in the distance.

(Said photograph was marked as an exhibit, "7.")

Q. Who took these photographs?

A. I did, sir.

Q. What did you do after you went over this west line?

A. After that we came back to the centre or to the ranch-house, which is a mile from the centre.

Q. In which direction a mile?

A. A mile towards the west. We then went down straight to these bald hills; went right across the country on horseback.

Q. What course did you take?

A. We went right from here (indicating on map) to these bald hills.

Q. What direction?

A. Went towards the east.

Q. Did you find anything over that course which you followed before you got to the bald hills?

A. No, sir; the bald hills are right here.

Q. Go on and describe what you did.

A. We didn't find any hills till we came to these bald hills. There were three hills, all together. There is a photograph of the bald hill whereon is southeast corner monument, viewed from the west.

(Said photograph was marked as an exhibit, "8.")

Here is a photograph of the southeast corner monument on bald hill.

(Said photograph was marked as an exhibit, "9.")

Q. From that bald hill what did you do?

A. We then went towards the cañon here, north or very nearly north, to search for the monument, which is described as being near some tanks of water and, as I understand, little rocky hills, and there we didn't have any trouble in the world in finding a monument.

45 Q. Did you take a photograph of that monument?

A. Yes, sir; the east centre monument, on a rocky hill.

Q. You say a rocky hill?

A. Yes, sir; in among the rocks was the old monument.

(Said photograph was marked as an exhibit, "10.")

Q. From thence what did you do?

A. We kept on towards the north to the first high hill we found. Here is the photograph, the northeast corner. There we found a high hill covered with rocks as shown in the photograph. On top of it I don't think we found a monument; I am satisfied we did not.

(Said photograph was marked as an exhibit, "11.")

Q. In going from one of these points to another, Mr. Roskruge, did you pay any attention to distances at all? Did you pay much attention to the distance from one point to the other?

A. Yes, sir. That point of the cienega is run on my county map. I passed right through that cienega, so I knew to a foot where I was, and in coming by the hot springs that is a surveyed line, and I knew where that was. When I got to the top of this hill I took my bearings from a corner on the standard line and another from what is called the "Casadanka." From the northwest monument I took my bearing to the southwest monument and then took other bearings which I don't recollect now. I had run lines in there for grants, and I forget now just what I did do, but I took enough to



satisfy myself that I could place it on the map. I did the same down here on the other corners.

Q. When you went from the centre monument to any one of these monuments which you have described as hot springs or the cottonwood or the southeast corner or the southwest corner or the northwest corner, what were you looking for when you went in those directions and courses? How did you obtain those  
46 courses that you went to one of those points? From what did you obtain those general courses?

A. After I came back I made a map showing the whole country with my triangulating points, and from that I protracted the whole thing out, the same as in case of the Sonoita.

Q. You say you had a copy of the expediente with you?

A. Yes, sir.

Q. Are there any courses set out in that expediente?

A. Yes, sir; there are. I cannot recollect now, but to the best of my recollection I think they were a little mixed.

Q. What did you do with reference to those courses in looking for those points?

A. It was apparently run by a mariner's compass.

Q. Did you attempt to follow those courses?

A. I don't remember now, but the supposition is we did.

Q. How did the points which you found correspond with the calls in the expediente?

A. In starting from the centre monument at the cienega and running towards the west we came along over probably ten miles of what is called good ground—that is, from there the ground would be called good—and then from there the ground was very rough towards the hot springs, 3 or 4 miles further on.

Q. Did you find anything else in that neighborhood corresponding to the hot springs?

A. No, sir; didn't find any springs at all till we came to them.

Q. How did the hot spring in the topography correspond with the calls of the expediente?

A. Corresponds exactly to my idea.

Q. This cottonwood at the northeast corner—how did that correspond with the calls in the expediente?

A. It is on the Santa Rita mountains. It corresponds exactly and so does the spring in front of the Santa Rita mountains. If you stopped short you would be the other side of the Canilla range.

Q. How does the bald hill correspond with the calls of the expediente?

A. It corresponds with the calls of the expediente.

47 Q. These monuments that you found and the tree at the west end, how do they correspond with the natural objects set forth in the notes of survey?

A. There is no doubt in my mind but what they are the marks called for in the expediente; I haven't the slightest doubt in the world.

Q. How as to the other end?

A. The same thing exactly. I haven't got any interest in making grants except exactly what I believe to be so.

Q. Then from your experience, Mr. Roskrige, and having made surveys of private land claims and following the calls of expedientes, did you have any difficulty in locating this grant according to the natural calls?

A. No, sir.

Q. You compiled a map—I don't care how you made it—from your own reconnoissance?

A. Yes, sir; from the data that I took I made that map, and I believe it to be correct from the data that I took.

Q. You have said in going over this from the centre station up towards the point of bald hills easterly you came to some tanks of water or "ojos"?

A. Yes, sir.

Q. Where were those?

A. The tanks?

Q. Yes. Were they in the mesa or in the valley?

A. Right in the valley. The water is forced back before it goes down the cañon, and that forces the water up and forms these tanks.

Q. Were they the only tanks you saw in that neighborhood there? Did you examine?

A. The only ones I saw there.

Q. In what direction did they lie from this rocky hill, and about how near to the rocky hill?

A. Well, they lay west of it, and I think there was one or two just in front. I am talking now from recollection, you understand.

48 That was 4, 5, or 6 years ago, but at the time I was there I was pretty well satisfied that was the point called for in the expediente, and I couldn't see any other point to which I could go to find the corner.

Cross-examination.

By Mr. BARNES:

Q. Have you the field-notes you took that day—the originals?

A. No, sir.

Q. Where are they?

A. The last time I saw those field-notes I was in court. I was asked to produce those field-notes then. That was last June, I think.

Q. What case was being tried then?

A. The Sonoita case.

Q. Were you asked for the field-notes of the Sonoita case or the Babacomari case?

A. They were all in the same book.

Q. Where is that book?

A. I am going to tell you. They were all in that book. I brought that book into court and I went back and placed that book right on my tracing board and then I went in to California and I

was terrible sick and when I came back that book was gone among the rest and I never have been able to find it. I had data in there for my county map. That wasn't the first time my office was broken into and papers abstracted.

Q. When you speak of monuments in your testimony don't you mean piles of stones?

A. Yes, sir; piles of stones.

Q. And whenever you do use that word you mean piles of stones?

A. Yes, sir; unless it says a hill taken as a monument, and then I take the hill as a monument, or hills.

Q. I am not talking about that, but when you say monument don't you mean a pile of stones?

A. I mean a pile of stones, or whatever it may be called. Yes; a pile of stones is generally a monument.

Q. Take the map in your hand, so I can call your attention to it.

A. (Witness did so.)

Q. I understand you to say that you have no doubt whatever that you have correctly designated on this map this expediente according to its calls?

A. Yes, sir.

Q. You believe that?

A. Yes, sir; I believe it.

Q. Do you remember whether, in that expediente, it described that the corners of this area measured were square or whether they had acute or obtuse angles?

A. That don't cut any figure.

Q. I am asking you what you remember about it.

A. I don't remember about it.

Q. If the correct construction of this expediente is that the area had square corners you haven't it here, have you?

A. No, sir; not that area.

By Mr. HOWARD: To save time, we will admit that there is more distance in these calls than is called for in the survey.

By Mr. BARNES: We will take care of that.

Q. Mr. Roskrige, how wide did you make this grant?

A. Well, the grant in one part is five and a half miles and the other part is wider.

Q. How much wider? How long is the line between the northeast and southeast monuments on your map?

A. That I could not tell you unless I worked it out; probably 20 or 30 miles.

Q. Don't your map show you how long it is—7 miles and  $2\frac{1}{2}$ —about 9 miles? Ain't the figures right there on your map? Read the figures at the end.

A. I did not understand your question.

Q. I asked you the length of the line between the northeast and southwest corners.

A. Oh, I will take it all back;  $9\frac{1}{2}$  miles.

Q. Now, if the construction of that expediente is that this was to be one league wide you have it about three times that much?

A. Yes, sir.

50 Q. If the proper construction is that this grant is one league wide you have it three times too wide at that place?

A. Yes, sir.

Q. And how much too wide at the other end?

A. Well, that is a little over—7½ miles.

Q. Well, if the construction is one league wide you have it more than two or three times too wide on this map?

A. Yes, sir.

Q. Now, did you extend this map upon the basis of the correct measurement in the expediente?

A. No, sir.

Q. You did not?

A. I did not pay any attention to the measurements in the expediente at all.

Q. Paid no attention to distances at all?

A. No, sir.

Q. In extending the lines upon the ground did you pay any attention to the courses described in the expediente?

A. If I recollect right, as I said before, the courses were terribly mixed up.

Q. Did you follow the courses?

A. I don't recollect that I did.

Q. Did you try to?

A. I can't recollect that, either.

Q. What did you do out there?

A. I went straight from the cienega to the hot spring up the valley.

Q. How did you go—on horseback?

A. I went straight (interrupted)——

Q. Did you go afoot or horseback?

A. Horseback, sir; I kept (interrupted)——

Q. Who was with you?

A. Mr. Cameron and Mr. Bruce.

Q. What Cameron?

A. Brewster Cameron.

Q. And Bruce?

A. Yes, sir.

Q. Who was the person that was going to kill you?

A. The man that lives at the ranch—the old Lurty ranch.

Q. Wasn't there a white woman living there at that time?

A. I don't know who lived there at the time.

51 Q. The daughter of Mr. Lurty?

A. I believe a woman lived there that was charged with shooting at Mr. Bruce.

Q. Were you there at the time she fired a shot at Bruce?

A. No, sir; I wasn't. I only heard of it in the papers.

Q. You don't know what Bruce was doing there?

A. No, sir; I do not.

Q. Who else did you see down there besides that man?

A. I don't remember.

Q. You don't remember anybody else?

A. I can't remember that I saw anybody else.

Q. Was Mr. Douglass there?

A. I don't remember that I saw him.

Q. Don't remember?

A. No, sir; I don't.

Q. If he was there, did he have any revolver strapped on him, or any Winchester?

A. No, sir.

Q. Didn't have anything of that kind?

A. No, sir.

Q. Who else did you see besides the one man that was going to kill you?

A. I did not see that man, even. Mr. Cameron and myself started out, and the man wanted to know where was Roskruge, and then he came and informed me that my life was in danger, and then I quit.

Q. And you and Cameron started for the hot spring?

A. Yes, sir.

Q. You knew where the hot spring was before you started?

A. Yes, sir.

Q. Had seen it before?

A. Yes, sir.

Q. Who suggested that you go on top of that hill to find the southwest corner monument?

A. Nobody.

Q. Did you go up there yourself?

A. Went up with the balance; we all went together.

Q. Had you ever been there before?

A. No, sir.

Q. What induced you to go on top of that hill? Did it correspond with the courses in the expediente?

A. In my opinion, it did; yes.

52 Q. Did it correspond with the distance in the expediente?

A. I don't think it did.

Q. Is the course on your map here the correct course from Monkey spring to the top of that hill?

A. Yes, sir; that is what it is.

Q. And that is the course you took?

A. Yes, sir.

Q. Did you make that course before you went on top of the hill and found a pile of stones, or after that?

A. I don't recollect whether—I probably took it before I went up there and then reversed it and took it back. That is the way I generally do.

Q. As a matter of fact, didn't you take that course and distance after you got home?

A. No, sir.

Q. How did you calculate that distance out there between Monkey spring and that pile of stones?

A. I triangulated from (interrupted)——

Q. Where did you triangulate from to calculate that distance?

A. I am just trying to tell you.

Q. Tell me now where you commenced that triangulation; tell where on this map you commenced that triangulation to make that calculation.

A. I told you before I have triangulated all (interrupted)——

Q. No, no; listen to my question, now. Where did you start your triangulation from—at what point on this map? Can't you tell that?

A. I went to the top of the hill and took the bearings of those two objects.

Q. You commenced your triangulation, then, from the top of that hill?

A. Yes, sir.

Q. At the point called the southwest monument?

A. Yes, sir.

Q. What did you do? Did you take that triangulation there? What did you do up there? What did you do?

A. I set up my instrument.

53 Q. Yes. What kind of an instrument was it?

A. And I took the courses to perhaps twenty different objects.

Q. What kind of an instrument was it?

A. Young & Sons' transit.

Q. And what point did you take as the basis of your triangulation from that point?

A. I took the quarter corner on the standard line and the half-mile corner at Casa Blanca.

Q. The quarter corner of what?

A. Of the public surveys.

Q. Did the public surveys extend over this whole country you were surveying?

A. Over that part; yes, sir.

Q. Had been extended over there, eh?

A. Yes, sir.

Q. Now, can you show us the place on this map which you say is the quarter corner which you made your triangulation to?

A. I can't do it; I don't know exactly where the Casa Blanca is.

Q. How far was it from the point where you stood to the point where you triangulated to?

A. Probably (interrupted)——

Q. Didn't you measure it?

A. No, sir.

Q. Did you go to the end of the line to triangulate anywhere?

A. No, sir; no need to go there.

Q. How do you triangulate from one end of the line? Will you explain that to us?

A. Those two corners made a base line.

Q. Did you every study trigonometry?

A. No, sir—studied it a little; yes, sir.

Q. Do you know how to measure the sides of a triangle?

A. There was a time I could work out every problem there was (interrupted)——

Q. What is necessary to be known in order to measure a given side of a triangle?

A. I want to tell you, sir (interrupted)——

Q. Never mind; answer my question. What is it necessary to know in order to measure the side of a triangle?

A. No, sir; I can't answer that question right now, sir.

54 Q. Did you know at the time you were out there on that mountain to triangulate that?

A. I knew then better than I do now.

Q. Did you know then?

A. Yes, sir.

Q. Well, how?

A. Because when I was in the surveyor general's office I learned that, certainly, and since then I have neglected the whole thing.

Q. Tell us, and tell us how you measured the distance from Monkey spring to (interrupted)——

A. I protracted it on paper.

Q. That is the only way?

A. Yes, sir.

Q. By the public survey?

A. Yes, sir.

Q. On the assumption that the public survey was correct?

A. Yes, sir, because I had measured it. I have gone over the public surveys for Mr. Richardson and measured them all.

Q. I understand you to say you measured the line from Monkey spring up to the southwest monument out there on the ground before you came home?

A. No, sir; I didn't say that.

Q. Now, what do you say? When did you measure it—after you got home?

A. After having all these points I came home and made a map and put the whole thing down and then protracted the whole business. I wouldn't have measured that grant for the whole country down there.

Q. Because somebody might kill you?

A. Yes, sir.

Q. As a matter of fact, didn't you measure the line from Monkey spring to that monument by means of dividers on that map by a scale?

A. No, sir; I couldn't do it. I made the body of the map—that is what I do right straight along—and from that I scaled it and protracted it and measured it, sir.

Q. Measured it with what?

A. Measured it with a scale.

Q. Well, I say after you got it protracted then you measured it?

A. Yes, sir.

55 Q. And by that scale you determined the distance of these lines?

A. I put it in at whatever it scales.



Q. Could not any good engineer take the scale on this map and, assuming these are section lines—section squares—tell the distance of any one of these lines?

A. Yes, sir.

Q. And is not that the way you did it?

A. Yes, sir.

Q. And that is the only way you did it?

A. That is the way I did it; yes, sir.

Q. Now, the calls of the expediente require that the line from Monkey springs eastwardly to the centre was 300 cords. Why did you protract this map upon the ground so that the line would be nearly 600 cords long?

A. Because I made a map showing what I believed to be the original calls of that expediente, knowing very well that the Mexicans never measured an inch of it.

Q. You were going on the theory that when those gentlemen said they measured 300 cords, as a matter of fact, they measured 600 cords?

A. I know they never measured an inch of it.

Q. Did you go on the theory that they were not on the ground?

A. That I didn't know anything about.

Q. Didn't you go on the theory that they measured it as you did—on horseback?

A. Of course they did; that is what they say.

Q. Did not Brewster Cameron point out to you every pile of stones that you have there?

A. No, sir; Mr. Bruce got tired and left. He had business somewhere else.

Q. You didn't notice any snipe on the fence when you were there?

A. No, sir.

Q. Did Brewster Cameron point out the monument at the southeast corner?

A. No, sir; he knew no more about it than I did; we found it.

56 Q. Who did point that out?

A. Nobody.

Q. Did you find that before you got that east centre?

A. Yes, sir; went there first.

Q. Went to the southeast monument first?

A. Yes, sir; because it is the most conspicuous object where the hills are, and we saw there were no hills between there and the cienega.

Q. Where did you ride from to ride to the southeast monument? Did you ride from the centre up there?

A. No, sir.

Q. Where did you ride from?

A. From the bald hills.

Q. Where are they on the map?

A. At the southeast corner.

Q. You rode from those bald hills?

A. Yes, sir.

Q. Where did you ride from to the bald hills?

A. I think we went into camp, then; I can't remember exactly.

Q. Where did you camp?

A. I think we camped back of the house.

Q. Away back at the centre?

A. I think we did.

Q. How did you get the line at the point of this angle up to the southeast monument?

A. Merely laid it off on paper and protracted it.

Q. That is the only way you knew of it?

A. Yes, sir.

Q. And how from the centre up to the east centre monument?

A. By locating the east centre monument from points that I knew and laying it out on the map and protracting it.

Q. Do you know how many cords there are between those two points?

A. No, sir. I had to go to the point called for.

Q. Your protracted map makes it 13 miles and over?

A. Yes, sir.

Q. Is not 13 miles over 500 cords?

A. I think it is.

Q. And don't the expediente call for 400 cords on that line?

A. I don't recollect what it calls for.

Q. How many sitios did the expediente call for?

A. I think an eight-league grant.

57 Q. Did you protract this with any regard to the size or quantity of the grant?

A. No, sir; not a bit.

Q. No attention to courses or distances either?

A. No, sir.

Q. Now, if you were endeavoring to verify another man's survey, would not you go out and try to find the lines he surveyed and measure them?

A. Yes, sir; I would; an American surveyor, but not a Mexican surveyor, when, in going over the grant, you find they are 10 or 15 miles out.

Q. Why didn't you endeavor to run the lines of this expediente?

A. I tried to do so again and again and found the mesas called for were 10 or 15 miles ahead of me. What's the use stopping in the middle of a plain?

Q. When the expediente says they measured 60 cords on a course and estimated 40, what would be the difficulty in measuring 60 cords and estimating forty?

A. I tell you, Judge (interrupted).—

Q. Did you try it?

A. Those cords of theirs was terribly long stretched, and their estimate was a little out, in my estimation.

Q. Did you try it?

A. No, sir.

Q. Is not fifty varas a unit of measure well known among surveyors?

A. Yes, sir.

Q. Usually determined; as to the length of it I mean?

A. Yes, sir.

Q. Having done that, was there anything in your way of measuring 60 cords from the centre westward?

A. Nothing at all, except the fellow that might have shot me.

Q. If he hadn't been there what would have been in the way of your going to the end of sixty cords and then estimating 40 cords beyond that?

A. Because I don't think I could have estimated it.

Q. Then you would not be as good a surveyor as the man  
58 who surveyed the expediente?

A. It would be a terrible rough guess—right across a lot of hills.

Q. Does it go right down the valley or up the valley, or how?

A. A. What?

Q. That line going westward from the centre. Is it not open, level plain from the centre down there 6 or 7 miles, and does not your map show no hills there till you get away down where the letter "N. 89 degrees" is?

A. Yes, sir; you could survey sixty cords there easy enough; it is good-running country.

Q. Why didn't you do it?

A. Because I was afraid that man would kill me. That is the only reason, you understand.

Q. What kind of a gun did that man have?

A. Mr. Cameron says he had a six-shooter in his hand.

Q. Did he follow you?

A. I don't know that he did. He came and cursed me, understand, on account of the county line that I took.

Q. The three of you?

A. No, sir.

Q. Well, you and Bruce and Cameron, you say?

A. Well, I was in terrible bad company.

Q. Well, I say there were three of you?

A. Yes, sir; there could be a whole army of us, come to that.

Q. Did you have any guns with you?

A. No, sir; I never carry a gun.

Q. Did Cameron or Bruce have a gun?

A. I couldn't say. I don't carry weapons at all. I have been here twenty-odd years and never carried a gun.

Q. This dotted line on your map that runs through the cienega, how long is that line?

A. Where?

Q. That dotted line running right across there (indicating); how long is that?

A.  $7\frac{3}{4}$  miles.

Q. No; it says  $6\frac{3}{4}$  and 2, doesn't it?

A. This looks like a 5 here.

Q. I believe it is a 5; you are right. What part of a league  
59 is that, or how many leagues?

A. About 3 leagues.

Q. How many cords is it?

A. 600.

Q. 600 cords?

A. No; 300, I guess, it would be.

Q. You stood on this hill—the southwest monument—and you  
say you could look away across over there and see that cotton-  
wood?

A. Yes, sir.

Q. And when you saw that cottonwood it was right in line with  
you, wasn't it? You said awhile ago when you looked across there  
and saw that cottonwood it was right in line with you?

A. I said it was very nearly in line with the spring.

Q. At the centre?

A. Yes, sir.

Q. There are a great many foot-hills of the Santa Ritas over  
there—foot-hills and cañons and rolling hills?

A. Yes, sir.

Q. Great many places where water runs down there in times of  
rain? A great many places of that kind?

A. Of course; when it rains, plenty of places.

Q. Is that the only cottonwood down there?

A. The only one I saw there.

Q. Did you go into any other cañon?

A. No, sir; there are plenty of cottonwoods in Sonoita cañon.

Q. They don't grow on tops of hills?

A. No, sir.

Q. Always grow in cañons where there is water?

A. Most of the time.

Q. Now, what kind of a pile of stones is that on top of the bald  
hill—the southeast monument?

A. Just an ordinary pile of stones.

Q. That is the place where Cameron and Bruce lay down; hid  
behind the pile of rocks?

A. No, sir; they lay down when they got near Mr. Richardson's.

Q. (Referring to photograph.) That is the pile of stones near the  
southeast monument, is it?

A. Yes, sir.

60 Q. What kind of a pile of stones was it at the northeast  
corner?

A. No pile of stones at all; nothing but a high hill.

Q. That (indicating) is the northeast corner?

A. Didn't find any monument there.

Q. This is the place you picked out on top of the hill?

A. Yes, sir; top of the hill.

Q. There is no especial pile of stones there?

A. None at all that I could find.

Q. The east centre, what kind of a pile of stones is there there?

A. There (selecting photograph No. "10") is a photograph of it.

Q. This is the pile of stones?

A. Yes, sir.

Q. Who are the two men standing there?

A. Brewster Cameron and a Mexican boy. Mr. Bruce had left us; got scared and had business somewhere else.

Q. How far from the pile of stones are those horses?

A. I couldn't tell you; perhaps 8 or 10 feet.

Q. Close by?

A. Yes, sir; you can't tell anything about photographs for distance or size.

Q. That is the reason I ask you. Now show us the picture of the monument at the southwest corner on top of the hill.

A. There it is (exhibiting No. "3").

Q. This is the one where they were lying down—hid?

A. No, sir.

Q. What one was that?

A. That was the one at the spring.

Q. Now, this is the one on top of that hill?

A. Yes, sir.

Q. Now, where is the one down by the spring, at the west centre?

A. (Handing counsel Exhibit "1.") That is Monkey spring.

Q. This is the one where they are hidden?

A. Yes, sir.

Q. Is not that them lying down back out there?

A. Yes, sir.

Q. You had travelled a good deal that day and it was warm?

A. Not for those fellows, I guess.

61 Q. That is the pile of stones you took for a monument on top of that hill (referring to another photograph in evidence)?

A. Yes, sir.

Q. And that (indicating on photograph) is the instrument you made these triangulations with?

A. Yes, sir; that is the instrument.

Q. How near is that to Monkey springs?

A. A couple of hundred feet.

Q. Does it look towards the Monkey springs or away from it?

A. I couldn't say that. I have photographs here of Monkey springs. Here is another (handing photograph to counsel).

Q. This is a picture of Monkey springs, is it?

A. Yes, sir.

Q. Can you tell us whether that monument is to the right or to the left of it?

A. Right.

Q. And that point you see there is the point of the corner of the grant? Off to the right of the photograph marked "5" is this monument?

A. Yes, sir.

Q. About how far from that spring?

A. About 200 feet.

Q. How much higher?

A. Oh, very little difference; 40 or 50 feet difference in altitude; I couldn't tell.

Q. Now take the photograph entitled "Cottonwood tree in little valley at northwest corner;" that is the photograph of the cottonwood tree?

A. Yes, sir; and the little valley—no, here is the photograph of the little valley (passing Exhibit "6" to counsel).

Q. Well, the cottonwood is in the little valley, is it not?

A. Yes, sir; and these is two men there to show the distance of it. I was taken ill when I got to that place and wanted to go to Richardson's, but they wouldn't take me.

Q. Afraid to go there?

A. Yes, sir; they were.

Q. Did you see Richardson while you were out there making that survey?

A. Yes, sir.

Q. Is he the man that you are afraid of?

62 A. No, sir; I ain't afraid of Mr. Richardson, but I want to show you the feeling that existed between them down there. I was half-way dead and I wanted to go there then and they wouldn't take me there.

Q. You were afraid to go?

A. No, sir; afraid of nothing.

Q. Who was afraid, then?

A. I was afraid of that fellow that lived at the house (interrupted)—

Q. Had he been following you down there?

A. These fellows kept following you up, understand; they don't stop with a few miles. They have assassinated five of my friends down there now.

Q. Who were the friends they assassinated?

A. Not right there in that valley, but in the southern part of the Territory; that country, understand. They assassinated Fritz and Rafferty and his wife and Judge Fuqua. They knew too much about land grants. They assassinated Frank Oury.

Q. Did you calculate the area of this grant?

A. No, sir.

Q. Never have?

A. No, sir.

By Mr. HOWARD: At this time I move to strike out all this evidence with reference to assassination. It is utterly immaterial and irrelevant and I do not wish the record to be cumbered with this stuff.

By Mr. REYNOLDS: He is your witness. We are willing it should go out.

By the COURT: Very well; it will be stricken out.

By Mr. HOWARD: We wish to introduce Mr. Bonillas's testimony when he comes back. He wishes to leave, and we would like to take his testimony when he comes back.

By Mr. REYNOLDS: But Mr. Bonillas is now in the court-room

and we insist that he be sworn and testify now, if at all, in this case.

63 By Mr. HOWARD: He has been detained here by the subpoena of this court. We aver that his evidence is material, and he has to go upon the ground to verify the matter about which he will testify.

By the COURT: You may take his evidence if you can get it in before the case closes.

Petitioner rests.

F. C. MERRILL, a witness called and sworn on behalf of the Government, testified as follows:

Direct examination.

By Mr. BARNES:

Q. Where do you reside?

A. At the present time in Graham county, in a place called Layton, Arizona.

Q. How long have you resided in the counties of Graham, Cochise, and Pima, in the southern portion of Arizona?

A. A little upwards of 17 years.

Q. When did you first come into the San Pedro valley?

A. In the year 1846, in December.

Q. At that time did you go up the Babacomari creek to its head and down into the Sonoita?

A. No, sir; we did not.

Q. What was your course?

A. From where we struck the river in our march westward we came over what is now known as the Guadalupe pass and came over on what is now known as the San Bernardino ranch, and from there we struck westerly across to the foot of the San José mountains, and from there we struck the San Pedro river; then we took down the river till we passed the mouth of the Babacomari, which we now understand is the name of it, after I came back there, 64 and then we crossed to the cienega at Pantano.

Q. Were you upon the Babacomari at all?

A. Only as we crossed above the mouth of it.

Q. In going over across that country, was anybody living there?

A. No, sir.

Q. No person at all living there?

A. No, sir; not that we saw.

Q. How far was that cienega from the mouth of the Babacomari?

A. Well, as near as I remember, and it is 48 years ago, it was about four miles that we struck across from the San Pedro. We tried to avoid the river on account of the roughness of the hills.

Q. Did you come over by the Empire ranch?

A. No; we went east of that.

Q. You came through this side of the range?

A. Yes, sir.

Q. You could see the country very well on your route?



A. We could see where there was no hills, of course.

Q. Was anybody living on the San Pedro there?

A. No, sir.

Q. Nobody lived on the San Pedro or Babacomari at all?

A. No, sir; we saw no inhabitants of any kind.

Q. At that time did you know that creek by the Babacomari creek?

A. No, sir.

Q. But since then you have been over there and know that that was the Babacomari creek?

A. Yes, sir.

Q. Do you know whether it had a name at that time or did you hear of a name for it?

A. Not that I remember of.

Q. Didn't hear its name at that time?

A. No.

Q. When was it after that time, in 1846, that you went there; how long time elapsed before you saw that valley again?

A. I then returned to this country with a small colony in the year 1877.

Q. Was anybody living in that valley at that time, claiming under a grant in the Babacomari?

65 A. Not that I know of. A man named Gearey had a herd of sheep at what we termed the head of it, between the Huachucas and the Whetstones.

Q. That was the only person there when you first came back?

A. Well, I didn't see him, either. I will tell my story: When I came to Tucson, in August, 1877, with my colony I got acquainted with a man named Thomas Gardiner, who had a ranch at the foot of the Santa Rita mountains, near the Empire ranch now, and there we located for a season until we got recruited from our travel; then I took two of my men and went on a prospecting tour. I skirted the east side of the Huachuca mountains (interrupted)——

Q. You crossed that valley, then?

A. Yes, sir; crossed what is now known as the Babacomari—the head of it.

Q. (Referring to map.) Now, suppose this is Greaterville and that is Gardiner's ranch?

A. Yes; there is where we stopped.

Q. And in going to the Huachucas you crossed over in here (indicating)?

A. Yes, sir.

Q. And here was a water-shed here?

A. Yes, sir.

Q. And during the rainy season water run through there?

A. Yes, sir.

Q. Anybody living in there then?

A. No, sir; nobody. There was a company of United States soldiers in camp where the Huachuca post now is.

Q. Away across there (indicating)?

A. Yes.

Q. Did you go to the post now called Camp Crittenden?

A. That is near Gardiner's ranch—the head of the Sonoita valley.

Q. Where did you finally settle down in there?

A. As I told you, on my exploring expedition I went to the line between the two republics—I judged it to be the line by the monument. I was told by Gen. Wasson here in Tucson that there had been a line run by the United States and the Republic of Mexico, and if I looked close I would find the monuments, which I did, and then I took my course down the San Pedro river, and when I came to the country I was very cautious, or I wanted to be, for I had been instructed not to get on any grant or onto any Indian reservation, because we wanted to make a permanent settlement—that is what I came to the country for—and I got all the information I could from the surveyor general, which was Mr. Wasson at that time, and he told me where he had surveyed across the San Pedro river that he had sectionized to a certain point and then run a township line still further south, but had failed, in consequence of want of funds, to complete the survey, and he told me if I would get anywhere below that that I would be perfectly safe in making a location for final settlement; so I did. I located about nine miles below the mouth of the Babacomari, on the other side, at the place now called St. David's.

Q. About how many families located there then?

A. Then only 8 families, 33 souls in all.

Cross-examination.

By Mr. HOWARD:

Q. That is not on the Babacomari—St. David's—is it?

A. No, sir.

By Mr. HOWARD: It is immaterial to this case. I have no questions.

CHRISTOPHER LAYTON, a witness called and sworn on behalf of the Government, testified as follows:

Direct examination.

By Mr. BARNES:

Q. How long since you first came into southern Arizona?

A. Well, I came in the same time Col. Merrill did first.

Q. In 1846?

A. Yes, sir; in 1846. I think it was in December.

Q. Did you come from the east or the west?

A. I had enlisted in the Iowa volunteers and came in with Col. Cook, in the war with Mexico.

Q. Where did you cross the San Pedro river—how near the mouth of the Babacomari creek?

A. Somewheres above there. We came by the San Bernardino

ranch and struck our way westward and across the San Pedro and then across the Babacomari, to the best of my recollection.

Q. How far from the mouth of the Babacomari did you cross that valley?

A. I couldn't say.

Q. Your best judgment?

A. Quite a little distance.

Q. How far from the cienega up there—that wet place or marsh?

A. Oh, we were away above that.

Q. Away above that?

A. Yes, sir; where we crossed.

Q. Now, was there anybody living in the Babacomari valley at that time—any habitation or houses or people?

A. Not at all, sir, I believe.

Q. Nobody there at all?

A. I don't believe there was.

Q. How long after that was it that you ever came back into that country?

A. Well, I came back—it is about 11 years and 3 months, as near as I recollect, since I came back here. I liked it when I went through here, and I thought it was a pretty good stock country, and I came back to locate it.

Q. You came back there, you say, about 11 or 12 years ago?

A. It is 11 years ago.

Q. You found Col. Merrill over there?

A. Yes, sir; he had been there several years, I think. He was living at a place called St. Davids.

Q. Did you go up on the Babacomari at that time?

A. Oh, yes; sir.

Q. Was there anybody living up there at that time claiming to own under a grant?

A. I don't know that they claimed that, but there were people living up there.

68 Q. Settlement up there?

A. Yes, sir.

Q. Some people settled there under the public land laws?

A. I think they claimed to do so.

Q. Who were they that you know of?

A. Land and Hayes were in there with some stock. No; it appears to me they came the year I went there. I think they did.

Q. Yes?

A. And several others that I disremember the names of.

Cross-examination.

By Mr. HOWARD:

Q. The San Bernardino ranch lies in what direction from the San Pedro river?

A. East, I should say, pretty near. Well, southeast, to the best of my judgment.

Q. You came from the east to the San Pedro?

A. Yes, sir.

Q. And you followed it down till you passed the mouth of the Babacomari?

A. No; we crossed the Babacomari.

Q. Do you know what is called the Box cañon of the Babacomari?

A. I believe I do.

Q. Have you traveled up it?

A. Oh, yes; I had stock there and bought a place there.

Q. When you first came to this country did you cross the Babacomari above the west end of the Box canyon?

A. The first time?

Q. Yes, sir.

A. We crossed the Babacomari just above where it empties into the San Pedro and south of it.

Q. How far from where it empties into the San Pedro?

A. Quite a little distance.

Q. A mile or two miles?

A. Not that far, I think. The army naturally took quite a scope. I think we camped there, to the best of my recollection.

Q. At that time you did not go any further up the Babacomari; more than a mile?

A. No, sir; something like that.

69 Q. Did not go away up the valley of the Babacomari?

A. Not at that time.

#### Redirect examination

Q. Was that party the first Americans that came here—the first with the American flag?

A. We were the first that came. We came around the end of the Whetstone mountains, and Mr. Merrill and I helped raise the stars and stripes in Tucson.

Q. The first time it ever was raised here?

A. Yes, sir; I think the old ruins right under the hills there, somewhere in this direction (indicating westward)—and some one was telling me it is there yet. Yes, sir; we hoisted the first stars and stripes here; we enlisted in the Iowa regiment in the war with Mexico as volunteers.

#### Recross-examination:

Q. When you passed the mouth of the Babacomari, was Col. Merrill with you the first time you crossed?

A. He was our adjutant.

Q. The first time?

A. Yes, sir.

WILLIAM J. ROSS, a witness called and sworn on behalf of the Government, testified as follows :

Direct examination.

By Mr. BARNES :

Q. Mr. Ross, when did you first see what we now know as the valley of the Babacomari?

A. In 1868.

Q. What were you doing there?

A. I was in the army.

Q. At that time was there anybody living in the valley between what is now known as Crittenden, down to its mouth, claiming to be occupying under a grant?

A. No, sir; there was one garrison there known as Fort Wallen.

Q. That was a garrison of soldiers?

A. Yes, sir.

70 (No cross-examination.)

PETER R. BRADY, a witness called and sworn on behalf of the Government, testified as follows :

Direct examination.

By Mr. BARNES :

Q. What is your name?

A. Peter R. Brady.

Q. When did you first come into what is now known as the valley of the Babacomari?

A. 1854.

Q. Was anybody living there then claiming to be occupying it under a Mexican grant?

A. No one.

Q. Was anybody living there at all?

A. No one.

Cross-examination.

By Mr. HOWARD :

Q. What time in 1854 did you come?

A. April.

H. O. FLIPPER, a witness called and sworn on behalf of the Government, testified as follows :

Direct examination.

By Mr. REYNOLDS :

Q. Go and get your sketch board, Mr. Flipper.

A. (Witness did so.)

Q. What is your occupation?

A. Civil engineer.

Q. What is your present employment ?

A. Special agent, Department of Justice.

Q. Assigned to what office ?

A. Assigned to the office of the United States attorney for the court of private land claims.

Q. State whether or not, under my direction, you have been to the city of Hermosillo to investigate the archives there with reference to this Babacomari grant.

71 A. Yes, sir ; I have.

Q. How lately ?

A. (Referring to memorandum.) I was in Hermosillo on the 7th of the present month.

Q. (Exhibiting document.) Did you have this document with you ?

A. I did.

Q. Did you compare it with what you found in the archives ?

A. I did.

Q. You found a copy of it there ?

A. Not an exact copy ; no, sir.

Q. What was the difference ?

A. There is a preamble in this which was not in the one in Hermosillo ; also a granting clause at the end which was not in that one at Hermosillo. The pregones here were set out in full in the one in Hermosillo ; they are not here. The three almonadas were given in full in the document there ; they are not here.

Q. Did you find in Hermosillo a copy of the grant as attached to this instrument ?

A. No, sir ; no such copy there.

Q. I will get you to state whether or not the gentleman, Mr. Rochin, in charge of the archives there, gave you all assistance in his power.

A. He did.

Q. Now, as to the construction of the instrument at Hermosillo, describe the kind of paper it is on ; also the dates ; whether stamped paper ; and, if so, of what dates.

A. I can read from my notes ?

Q. You may use them to refresh your memory.

A. First and second sheets of paper, 2 reales, for the years 1822 and 1823, seal third. The third and fourth pages are on Mexican paper, seal fourth, for the years 1824 and 1825. Fifth and sixth sheets on paper of Fernando 7th for the years 1811 and 1812. The seventh sheet on Mexican paper, fourth seal, for the years 1824 and 1825. Eighth, ninth, tenth, and eleventh sheets and twelfth sheet on paper of Fernando 7th, fourth seal, for the years 1811 and 1812.

72 Thirteenth sheet, Mexican paper, fourth seal, for the years 1824 and 1825. *Four-, Mexican paper, fourth seal, for the years 1824 and 1825.* Fourteenth sheet on Fernando 7th paper for the year- 1811 and 1812. 15th, 16th, 17th, and 18th sheets on Mexican paper of the fourth seal, and nineteenth sheet on Mexican paper of the fourth seal for 1829 and 1830. That is all the paper that was used.

Q. Have you had occasion to investigate Mexican and Spanish archive documents in relation to private land claims?

A. I have.

Q. When did you first commence your work in that respect?

A. In 1882.

Q. In what capacity were you acting at that time?

A. I was surveying the public lands under concessions given by the Mexican republic.

Q. How long were you engaged in that?

A. Ten to eleven years.

Q. In Mexico?

A. In Mexico; yes, sir.

Q. You are thoroughly familiar with the system of surveying under Spanish and Mexican systems?

A. Yes, sir.

Q. As it existed in Sonora and Mexico?

A. Yes, sir.

Q. Your surveys were principally in what State?

A. Sonora and Chihuahua.

Q. State what is meant by "stamped paper" in reference to titles and the importance attached to it.

A. The stamped paper had different prices according to the different taxes that the government collected on documents.

Q. I know, but what was required with reference to stamped paper?

A. A paper of the year in which the document was made should be used. Many times when the paper was out other paper was used, and it was marked on the top that it was good for the year in which it was used.

Q. That is what I want. Now, when paper was used different from the year for which it was used officially state whether  
73 or not that fact was officially noted.

A. The paper to be good should be so noted at the top. For instance, paper of last year to be good for this year should be noted that it was made good for the year in which it was used.

Q. Were any such notations made in this expediente?

A. None that I saw.

Q. By whom should that notation be made?

A. Should be made by the official who sold the paper, the treasurer general of the State.

Q. Did you compare the notes of survey in that document with the notes of survey in the expediente at Hermosillo?

A. I compared the calls; yes, sir.

Q. How did they correspond?

A. The calls are the same in this as in that at Hermosillo.

Q. Can you take the description of the property by courses and distances as given in that document which is called the "titulo" and also given in the document called the expediente at Hermosillo and locate it?

A. No, sir; some of the calls are impossible.



Q. Take your chalk and blackboard and locate your first point arbitrarily anywhere on the board.

A. (Witness did so.)

Q. Now take this translation and lay those lines down where they are or where they can be called off, and if they cannot be laid down explain why they cannot.

A. The first course in the expediente is "east northwest quarter east to the west southwest quarter west." The first course, "east northwest quarter east," is impossible; you cannot jump from east to west; it passes a cardinal point. The next one, west southwest quarter west, can be and it would be somewhat in that direction (illustrating on board). Now, taking that (indicating) as a  
74 starting point, the first line would run about like that (indicating) 100 cords which run to a point in a little valley.

Q. That is the point in the little valley close to some bald hills, is it?

A. Yes, sir. Then there were measured and counted in the same direction 243 cords, and 57 cords more were estimated in the same direction; that would be down there (illustrating). The next course can be determined. It would run in that direction, more or less (indicating on board), 60 cords. "Southeast quarter south southwest;" that cannot be determined. It passes a cardinal point. "To complete the side of the square in the opposite direction;" that is impossible because it passes a cardinal point. "North northwest quarter northwest;" that can be determined. It would run like that (indicating). Now, returning to the centre monument, "west southeast and east northwest;" both of these are impossible. He states that he measured 74 cords and estimated 26 and then measured 300, which brings us to the end of the tract. It is impossible to get to the other end of the tract in that way, because we do not know in what direction he run it.

Q. Those, then, are the only lines that you can lay down?

A. Yes, sir; the others are impossible.

Q. Now, if Mr. Roskrige's location of the natural objects called for in here are topographically correct on his map, if you start at the centre monument and run out the courses that the expediente calls for it would not bring you to them, would it?

A. No, sir; it would not.

Q. And if you run out the distances it would not bring you to them?

A. No, sir; it would not.

Q. In other words, that is all you can lay down of this grant from the calls of this title paper which you say correspond with the calls in the expediente at Hermosillo?

75 A. If I could get out to the end of this line (indicating) and knew what direction to give the next call, "south southwest quarter southeast," which is also impossible, I might be able. The next one, "north northwest quarter northwest," is possible, and the next, which is the same, is possible, but "south southwest quarter southeast" is impossible.

Q. In other words, it is impossible to lay them down, because they go from a point that cannot be laid down itself?

A. Yes, sir; of these three courses here (indicating on board) one is possible; it runs somewhat in this direction (indicating) and the others impossible.

Q. Because the calls reverse the line and run it the other way?

A. Yes, sir.

Q. There is not any way to lay this grant down so as to close it up?

A. None whatever.

Q. Taking the distances and the calls?

A. Most of the calls are impossible.

Q. I say, taking the angles and the distances given in the expediente can it be laid down at all?

A. It cannot; it is impossible.

Q. Nor would the calls and distances carry you to any of the natural objects?

A. They would not.

Q. Or would it carry you anywhere near them?

A. No, sir; they would not.

Q. But would carry you in an entirely different direction?

A. For instance, the hot spring is pretty nearly due west from that point (indicating the initial point) and the line called for is south 70 degrees west, so following this course would go nowhere near that.

Q. In other words, you follow the course from the centre line and it would not bring you anywhere near Mr. Roskrug's point, running it out any distance?

A. No, sir; his centre monument is wrong; it is not the true centre monument.

76 Q. Have you had occasion to examine the country with reference to piles of stones called by Mr. Roskrug "monuments"?

A. On his centre line I have; yes, sir.

Q. And what did you find?

A. At the cienega? He describes the centre monument as being in a cienega. There is no monument there whatever. On the north side of the cienega, probably 300 yards from it, there are three piles of stones.

Q. Describe them.

A. Three monuments on a line nearly east and west, each of them about eight inches high, each one of small loose stones about three feet wide. The middle one contained nine large stones, about 8 x 8 x 6. The west one has stones about the size of the middle one and about three feet across. The stones in all of them are laid together loosely, and I would not take them to be monuments. The middle pile is forty feet from the west pile and thirty feet from the east pile.

Q. I will get you to state as to the finding of monuments of that same character all over that country.

A. Yes, sir; any number of them all over that country.

Q. What do you ascribe them to?

A. To Indians.

Q. What did you find at Monkey springs?

A. At Monkey springs itself there is no monument; it sets in sort of a vale and about 200 yards west of it, on top of a hill, is a loose pile of stones. The monument described in the expediente, where the estimated distance terminates at the hot spring at the foot of a bald hill, at the foot of that hill there is not even one rock that I could find in any direction until you get on top of the hill and then there is a pile of stones.

Q. What is the character of that pile?

A. Just thrown together; not piled up at all; probably four feet across, of the same kind of stones as seen in other places.

77 Q. Have you ever had occasion to reduce to cords the various lines laid down on this Roskruge map?

A. Yes, sir; I have.

Q. I wish you would give us that so we may have it in cords.

A. From what is called the centre point on this map to the east centre monument the distance is 511 cords. From the east centre monument to the northeast monument is 267 cords. From the east centre monument to the southeast monument is 95 cords. From the starting point at the cienega to the west centre monument the distance is 564 cords. From the west centre monument to the northwest monument is 219 cords. From the west centre monument to the southwest monument the distance is 76 cords. Those are Mr. Roskruge's distances given in miles and chains reduced to Mexican cords.

Q. How many cords in a linear league?

A. 100.

Q. Have you had occasion to calculate the area of that map as given—the area of that grant as given on that map?

A. Yes, sir.

Q. How much did you find it?

A. I find that the figure here does not close. I balance it and find that it contains 131,500 acres.

Q. About how many sitios would that be?

A. About 30 and a half—30½.

Q. Did you find any peculiarity in regard to the recital in the expediente and this document here with regard to the reason why this document had been issued—this document called the “titulo”?

A. There is a communication from the treasurer general, Gaxiola; he says that the honorable congress of the union had been consulted by the government of the State of Sonora as to their authority to issue titles, and until answer had been received he gave the certified copy of the expediente—the one they have.

Q. That is endorsed on the document there, is it?

A. Yes, sir.

78 Q. Have you read the similar one in the Boquillas?

A. Yes, sir.

Q. Is that part of the title issued by Mendoza or attached to it?

A. It is attached to it. It is signed "Gaxiola, treasurer general of the State of the West."

Q. Attached to the expediente down there?

A. Yes, sir.

Q. Now as to the year?

A. 25th of April, 1828.

Q. That is the certificate?

A. Yes, sir.

Cross-examination.

By Mr. HOWARD:

Q. Mr. Flipper, you have stated that there are some impossible courses?

A. Yes, sir.

Q. After starting from the centre monument?

A. Yes, sir.

Q. Don't you think those courses were mistakes?

A. I have no way to know what they were.

Q. Now, if you were going to make a survey, having a centre point given to you and you started towards the east along a valley to carry out one of these lines given in this grant, don't you think you could take the calls of that grant and locate that east centre monument?

A. No, sir. I might if I could get a straight line to go to two or three points.

Q. If that call went east instead of southwest and you took that course you could go to the natural monuments in the grant?

A. It is impossible to know what that call means. Your translator didn't know what it meant; it has been corrected in your translation a dozen times. "Southeast quarter south southwest," you have got to jump from the east and pass the south cardinal point to get to the west. It is impossible.

Q. You, in fact, went to the east centre monument, as set out in Mr. Roskrug's survey?

A. Yes, sir.

79 Q. Did you look at that natural object as called for in the expediente?

A. It calls for a rocky hill. There is a rocky hill there.

Q. Is there any tank of water before you get to that?

A. None whatever; not now; not a sign of a tank.

Q. Disregarding the wrongful courses given and the distances, does not that rocky hill correspond with the call for the east centre monument in the expediente?

A. No, sir; because there are not only the rocky hill marked on this map here, but five or six of them running across in this direction and I don't know which one is referred to in the expediente.

Q. Did you go to the southeast corner as called for in Roskrug's map—the bald hill?

A. I did not.

Q. Did you go to the hill called the northeast corner of the Roskruge survey?

A. I haven't said that I did.

Q. I have not said that you did. I am asking you if you did.

A. No, sir; I did not. I went over the centre line.

Q. You did not go to the southeast or to the northwest corner as set forth here?

A. I did not.

Q. Did you go to the northwest corner set forth in this survey?

A. I did not.

Q. Did you go to the southwest corner set forth in this survey?

A. I did not.

Q. Therefore you did not see the natural objects there set forth in that survey?

A. That hill in the southwest corner is visible from Monkey springs.

Q. Is the northwest corner visible from there?

A. No, sir.

Q. Is it visible from the top of the hill in front of that spring?

A. It is not.

Q. Therefore you cannot say whether the northwest corner—the tree—is visible from the southwest corner monument?

A. I cannot.

Q. Have you followed the general trend up and down of the Babacomari creek?

A. I have.

Q. What is the general course and distance of it, east and west?

A. Generally it is east and west; yes, sir.

Q. Is it not generally that the valley and creek is included within this Roskruge map?

A. Yes, sir; it is.

Q. From the east end to the far west?

A. It goes over on to the head of the Sonoita.

Q. It passes the Hot spring?

A. It passes one of them; there are two.

Q. Where are they?

A. One is near Ft. Crittenden, east of Monkey spring.

Q. North or south of it?

A. South of Fort Crittenden; in there somewhere (indicating on map).

Q. That is north of the present Hot spring?

A. It is north of the Monkey spring.

Q. What is called Hot spring is what we term Hot spring in the Roskruge (interrupted)——

A. Yes, sir; but the other one is known in the country there as Hot spring and this one is known as Monkey spring.

Q. That is, since you have known it there?

A. Yes, sir.

Q. How long have you known that Hot spring?

A. Known it since 1886 or 1887.

Q. Does this Hot spring that you speak of just north of the Hot spring that we speak of in the Roskruge survey, is that in a valley or on a hill?

A. It is in a little valley. It is on the south bank of the Sonoita creek.

Q. From that spring can you see the southwest corner—the bald hill?

A. You cannot.

81 Q. Can you from there see the northwest corner?

A. You cannot.

Q. How does that lie with reference to the Santa Ritas?

A. They are in full view from there.

Q. From that spring?

A. Yes, sir.

Q. This titulo which we have here and which you have testified about, is that stamped paper throughout—the proper stamped paper, according to your ideas, of the State of Sonora—of the dates they purport to be?

A. This titulo purports to have been issued in 1831, and these are for the years 1831 and 1832.

Q. Then you would consider that correct paper?

A. Yes, sir; in this titulo.

Q. Do you know of any regulation or law which requires the paper used in the matrix and expedientes—requiring them to be on stamped paper?

A. All official documents are required to be written on stamped paper.

Q. Have you examined a great many other expedientes and matrixes in Sonora?

A. Yes, sir; I have.

Q. Many of them?

A. Yes, sir.

Q. Many of them on stamped paper?

A. The same as any stamped paper. The one in the Nogales is in stamped paper, but that stamped paper was replaced before the title was issued.

Q. Do you know of any law or any ordinance requiring expedientes or matrixes to be on stamped paper?

A. The law requires all to be on stamped paper.

Q. I am speaking particularly. Do you know any law requiring the paper on which matrixes are written to be stamped paper?

A. The law of 1825 of Sonora and the law of 1834 says that proceedings shall be on stamped paper, and the denouncer of land has to pay for it.

82 Q. Do you know of any law by which matrixes must be on stamped paper?

A. I do not know that any law says particularly that matrixes shall be.

Q. You do not know of any law requiring matrixes to be written on stamped paper?

A. The law says proceedings and denouncement of land shall

be written on stamped paper—two laws of 1825 and of 1834. Those three laws so state.

By Mr. REYNOLDS :

Q. Which is the larger of those two springs on the west end of this claim as laid down there?

A. The south one—Monkey spring—is the larger spring.

Q. How far apart are they?

A. Probably a mile or a mile and a half, nearly due south from the Hot spring.

R. R. RICHARDSON, a witness called and sworn on behalf of the United States, testified as follows :

Direct examination.

By Mr. BARNES :

Q. What is your name?

A. R. R. Richardson.

Q. How long since you first went down on the Babacomari creek?

A. About 1881 and 1882.

Q. Where have you lived since then?

A. I have lived in that part of the country about Crittenden most of the time.

Q. Have you lived at Old Camp Crittenden most of the time?

A. Yes, sir.

Q. That is one of the headquarters of your cattle ranches?

A. Yes.

Q. What kind of spring is there near there?

A. This large warm spring.

Q. What do you do with it?

A. We ditch it down the valley about three miles for irrigating the Hughes ranch and also for stock purposes.

Q. Where is that other spring from there?

A. About a mile and a half from there, I should judge.

Q. What direction?

A. South.

Q. How about the size of that spring—the amount of water?

A. Well, I think that is about three times as large as the one at the upper place.

Q. Is that a hot spring, too?

A. Warm spring; yes, sir.

Q. What did you do with that water?

A. Run it down the valley and put it in another ditch with other water.

Q. How far below there did you irrigate with these waters?

A. Run it about four miles down the valley further, making about 7 in all.

Q. How many people settled in that valley cultivating the lands, claiming under the Government?



A. Sonoita valley?

Q. Yes, sir; in round numbers.

A. Hard to tell you.

Q. No; I mean the Babacomari—yes; that is the Sonoita over there at Crittenden?

A. The warm springs runs down the Sonoita.

Q. And the watershed is broken there between the Babacomari and the Sonoita?

A. Yes, sir; the first break is six or eight miles out.

Q. How many people are there living inside the Roskruge survey on the Sonoita in there, or are they all below?

A. They are all below, with the exception (interrupted)——

Q. How many on the other side in the Babacomari, living in there, claiming under Government entries?

A. I couldn't tell you; I know 4 or 5 families.

Q. Now, are you acquainted with the foot-hills of the Santa Ritas?

A. Yes, sir.

Q. Ridden all over them after cattle?

A. Yes, sir.

84 Q. In the cañons that come down towards old Camp Crittenden are there more than one?

A. Yes, sir; quite a number.

Q. Are there any cottonwood trees there in those canyons?

A. Yes, sir; almost all those cañons have cottonwood trees in.

Q. Do you know of any cottonwood tree in any one of those cañons having a distinctive mark on it?

A. No, sir.

Q. Does not the watershed from the Santa Ritas run down in all the cañons that side of the mountain?

A. Yes, sir; a great many cañons for miles there.

Q. How great is the distance between the west centre monument of the Roskruge map and the west centre monument—about how far is it?

A. I don't know. I didn't know where they had those monuments located.

Q. How far from Camp Crittenden down to Fairbanks?

A. Well, I should think in the neighborhood of thirty miles, at a rough guess.

Cross-examination.

By Mr. HOWARD:

Q. You say that all these cañons that come down out of the foot-hills of the Santa Ritas have a number of cottonwood trees in them on both sides; did I understand you?

A. Not all; but quite a number.

Q. Not all of them?

A. Some have not.

Q. Have they all a number of cottonwoods in them?

A. Some have not any, perhaps some one or two, and others a dozen or more.

Q. Do you know this cañon where the little cottonwood is—have you seen it—in this survey of Roskrige's I mean?

A. No, sir; I don't know where it is located.

Q. Have you been to it?

A. I have been in all those cañons.

Q. Have you been to this particular cottonwood tree located here?

A. I never noticed it particularly, but chances are I have passed it.

85 Q. Would you think it unusual, Mr. Richardson, to go into a nice level valley in the foot-hills of the mountains and find a nice-looking valley like this, and would you think it remarkable to find a fine cottonwood tree there and no more?

A. I can show you several valleys there where there are one or two or three. We have one valley where there is a fine spring and two cottonwood trees.

Q. What cañon is that?

A. That is the Alamo, about four miles further east than the warm spring.

Q. The northern of the two warm springs?

A. Well, in an easterly direction, about four miles further east than the warm springs.

Q. The northern of the two warm springs?

A. Well, in an easterly direction, about four miles from them—from either of them. They are almost north and south.

Q. Can you name any other cañon where there is only one cottonwood tree?

A. Yes, sir; two miles further east—Papago cañon, where we have a spring.

Q. How many trees are there there?

A. One particular one right at the spring, but two or three there.

Q. Two or three right there together?

A. No; only one at the spring.

Q. Below, how far are the other trees you speak of?

A. I couldn't tell you exactly.

Q. 100 or 200 yards?

A. Probably a quarter or half a mile.

By Mr. BARNES:

Q. Did you ever go up on top of the hill southwest of Monkey spring?

A. Yes, sir.

Q. You have?

A. A good many times.

Q. What is up there in the way of piles of stones?

86 A. You find piles of stones a good many places there.

Q. On top of the hill?

A. Yes, sir.

Q. Can you look from there and see a cottonwood tree in any particular cañon?

A. I would say yes, sir; quite a number of them in different cañons, but I don't remember of seeing any one in particular. I know those cañons are in view from there.

By Mr. HOWARD:

Q. When you were on top of that hill did you have an instrument with you?

A. No, sir.

Q. A surveying instrument containing a telescope?

A. No, sir.

Q. Did you have a telescope?

A. No, sir.

By Mr. REYNOLDS: I want to offer the expediente in the Boquillas case for the purpose of showing the reference to the issuance of the title in this case so that I may get the exact Spanish of it. That is the only purpose for which I offer it.

Of course if counsel on the other side insists on our putting the whole of the document in we will do so, but it is only for the purpose stated that I care for it.

By Mr. HOWARD: Very well, you may put that in.

By Mr. REYNOLDS: Of course the document may be before the court for any proper purpose, but the only portion I wish is with reference to the issuance of title.

I desire to offer in evidence the certificate of the treasurer general, with translations, as to the condition of the treasury books at Hermosillo. I will file with the clerk before tomorrow morning a translation of this document now offered in full. A great many portions of it we do not disagree about, but as to some parts there seems to be some disagreement. As soon as it can be made I  
87 will file our translation with the court, with the certificate of the Government translator.

By Mr. HOWARD: We should like to have an hour, at the outside, in the morning for rebuttal if the court will indulge us so far. We are not ready to proceed now, but will be as soon as court convenes in the morning.

By the COURT: Very well.

Adjourned until tomorrow morning at 9.30 o'clock.

WEDNESDAY, *March* 28, 1894—9.30 o'clock a. m.

Appearances as before.

R. C. HOPKINS recalled on behalf of petitioners in rebuttal.

Direct examination.

By Mr. HOWARD:

Q. Mr. Hopkins, will you please state who was Francisco Robles, resident of Sonora?

A. I learned in 1879, when I was in Sonora in connection with

this matter, that she was the widow of Florencio Elias, son of Ygnacio Elias.

Q. Who did you learn that from?

A. From Judge Domingo Elias and others of the family. He was a nephew of Ygnacio Elias.

By Mr. REYNOLDS:

Q. Did these Eliases belong to the family of Rafael Elias?

A. I cannot state now as to that.

Q. You say he was the nephew of Ygnacio Elias?

A. Judge Domingo Elias is a nephew of Ygnacio Elias.

88 Q. Do you know who Ygnacio Elias was?

A. Well, I forget the name of his father now, but I have known.

Q. Wasn't he sometimes known by the name of Ygnacio Elias Gonzales?

A. Gonzales was the common name, I think.

Q. This man Ygnacio Elias you refer to in the title papers, was he also known as Ygnacio Elias Gonzales?

A. Perhaps; I am not certain as to that.

Q. Was he a son of Rafael Elias?

A. That I am not certain of. I can't remember.

Q. Did you ever hear of a man by the name of José Juan Elias?

A. Perhaps I have; I cannot now distinctly remember. I have to some extent forgotten the genealogy of the family of Eliases. It is a large family and it has been so long ago that I can't recollect distinctly.

By Mr. HOWARD: I will state that we offered numerous documents in support of the chain of title, including those that are filed in the surveyor general's office in the matter of this grant. We offered those with the understanding that abstracts of all those documents should be filed in the case.

By Mr. REYNOLDS: We wish abstracts filed, of course, at some time, but that may be done hereafter.

Petitioner rests.

By Mr. REYNOLDS: I desire to offer in evidence, for the purpose of showing the genealogy of this family, a deposition, taken in the suit in which the present plaintiff was a party, on behalf of Ainsa, trustee of the estate and administrator of Ely, against the estate and administrator of Juan José Elias, dec'd; Robert Perrin, and a lot of others, for the purpose of showing the genealogy of this family and their various names—the names by which they were called. The

89 deposition was not taken in this case, and ordinarily it would not be competent.

Rest all. Testimony closed.

Argument of counsel followed.

WEDNESDAY, *March 28, 1894*—3 p. m.

By Mr. HOWARD: I trusted to have a witness as to the character of the paper made in Mexico which Mr. Flipper testified about. I sent a telegram to the treasurer general of the State of Sonora, and he says it is extended upon the debilitated paper made good for the year in which it is supposed to have been written. I would like the privilege of filing that telegram.

By Mr. REYNOLDS: There is no objection.

By the COURT: It may go in.

90

OFFICE OF SURVEYOR GENERAL,  
TUCSON, ARIZONA, *January 8th, 1894.*

I hereby certify that the paper attached hereto is a correct copy of the paper it purports to be a transcript of on file in this office.

[Seal U. S. Surveyor General's Office, District of Arizona.]

LEVI H. MANNING,  
*U. S. Surveyor General, District of Arizona.*

91

# EXHIBIT A.

## *Título.*

De merced de ocho sitios de tierras para cria de ganado mayor y caballada que comprende el puesto nombrado San Ygnacio del Bavocomari, en jurisdiccion del presidio de Santa Cruz; espedido por la Tesoreria General de Sonora, á favor del ciudadano Ygnacio Elias y Da. Eulalia Elias, el primero vecino de Rayon, y la segunda de Arispe.

92

Sello segundo.  
Doce reales.

[SEAL.]

Para los años  
de 1831 y 32.

José Maria Mendoza Tesorero general del Estado libre Yndependiente y soberano de Sonora :

Por cuanto al arto. 11 del soberano decreto numero 70 del Congreso General de la union fha. 4, de Agosto de 1824 concede á los Estados las rentas que en dicha ley no se reservó la Federacion y siendo una de ellas la de los terrenos de sus respectivos distritos, que les pertenecen por consecuencia, para cuya mercedacion dictó el honorable Congreso Constituyente del Estado que fué unido de Sonora y Sinaloa la ley numo. 30, de 20, de Mayo de 1825, así como las successivas legislaturas otros decretos relativos: Y habiendo hecho formal denuncia el ciudadano Ygnacio Elias y Da. Eulalia Elias el primero vecino de la villa de Rayon, y la segunda de esta capital, ante la Tesoreria general que fué del Estado unido al terreno nombrado San Ygnacio de Bavocomari sito en la jurisdiccion del presidio de Santa Cruz, les fué admitido conforme á derecho con fha. 1° de Julio de 1827, y el escrito de denuncia, decreto de comision y auto de obedecimiento, son del tenor siguiente.

Sor. Tesorero General :

Dn. Ygnacio Elias y Da. Eulalia Elias ante V. S. se presentan en debida forma y dicen : Que nesecitando terreno para bienes  
93 de campo, denuncian en consorcio de Dn. Rafael Elias, el capitan Dn. Ygnacio Elias y Dn. Nepomuceno Felix el baldio que linda con el rancho de San Pedro en la comprehencion de Santa Cruz, hasta

Sello cuarto.  
Una cuartilla.

[SEAL.]

Para los años  
de 1831 y 32.

el punto de tres Alamos, obligandonos á satisfacer á la Nacion los derechos que le correspondan, con lo demas que fuese de justicia hasta adquirir el titulo de merced y confirmacion, para cuyo efecto se hade servir V. haber por registrado y denunciado dicho terreno baldio, por tanto. A V. S. suplicamos se sirva mandar proveer como solicitamos lo que recibiremos merced.

Arispe 12 de Marzo de 1827.

Por ausencia y ruego de—

DN. YGNACIO ELIAS.  
JOAQUIN ELIAS.  
EULALIA ELIAS.

COSALA, 1° de Julio de 1827.

El Alcalde de policia de Santa Cruz, procederá con facultad que para ello se le confiere sin perjuicio de tercero que mejor derecho represente, y previa citacion de los colindantes, á las medidas avaluos y pregones por treinta dias consecutivos de las tierras que espresa el anterior denuncia, sujetandose en toso al Soberano Decreto del honorable congreso constituyente del Estado numero 30, de 20 de Mayo de 1825, y al reglamento que le acompaña y evacudas que sean dichas diligencias las remitirá á esta Tesoreria, citando á los pos-  
94 tores que resulten para que ocurran por si ó por apoderados, sal remate que debe celebrarse en dicha oficina previas las tres públicas almonedas de estilo. El Tesorero general del Estado Nicholas Maria Gajiola, asi lo decretó y firmó.

GAJIOLA.

En el presidio de Santa Cruz y á los cinco dias del mes de Octubre de mil ochocientos veinte y ocho :

Sello cuarto.  
Una cuartilla.

[SEAL.]

Para los años  
de 1831 y 32

en vista del antecedente decreto del Señor Tesorero General cumplase lo mandado del citado decreto fecha 1° de Julio de 1827, y al efecto con citacion de los interesados, colindantes perito agrimensor y demas oficiales necesarios que se deberán nombrar pasese por mí á la Hacienda de San Pedro con el fin de que se proceda á la mensura de los sitios que los interesados desean. El Ciudadano Alejandro Franco Alcalde constitutional del presidio de Santa Cruz,

por este auto así lo determinó y firmo con testigos de asistencia con quienes autua por rectoria por falta de escribano público según derecho.

Por ALEJANDRO FRANCO,  
RAMON ROMERO.

De asistencia :  
RAMON ROMERO.

De asistencia :  
FRANCISCO GAUNA.

Seguidamente procedió el Alcalde Agrimensor, previa citación de colindantes, al nombramiento del oficial contador, medidores  
95 y apuntadores que lo fueron los ciudadanos Lorenzo Sortillón, Andres Montoya, Pablo Elias, Antonio Campoy y Mauricio Neira, quienes aceptaron y juraron cumplir fiel y legalmente con sus encargos, y dio el Alcalde las medidas que constan en las siguientes diligencias.

En el referido puesto y el mismo día mes y año para proceder á la medida, estando presentes los interesados oficiales nombrados y testigos de asistencia mande que se midiese un cordel de cincuenta varas y atados sus extremos á dos astas, se procedió á la enunciada mensura por el perito agrimensor Ciudadano José Maria Caballero,

Sello cuarto.  
Una cuartilla.

[SEAL.]

Para los años.  
de 1831 y 32.

quien colocando el Agujon tomo el biento este Norueste cuarto al este para veste surueste cuarto al ueste donde hice poner mojonera cruz, y desde dicho punto por el referido punto se midieron y contaron Cien cordeles que remataron en un vallecito con intermediación á unas lomas pelonas en donde hice poner mojonera, y por ser ya tarde hice recoger la cuerda y que los oficiales y demas, se retirasen á descansar hasta el día siguiente que continuase la medida, lo que pongo por diligencia, y lo firmé con lod de mi asistencia y demas interesados que me acompañaban de que doy fé.

Por ALEJANDRO FRANCO,  
RAMON ROMERO,  
YGNACIO ELIAS,  
JUAN NEPOMUCENO FELIS,  
YGNACIO ELIAS GONZALES,  
96 JOSÉ DE CABALLERO,  
LORENZO SORTILLON,

Por ANTONIO CAMPOA y  
MAURICIO NEIRO,  
FRANCISCO GAUNA,

Por ANDREZ MONTOYA,  
Y por mí PABLO ELIAS.

Asistencia :  
RAMON ROMERO.

Asistencia :  
FRANCISCO GAUNA.



En el paraje en que mandé poner la segunda mojonera nombrado el valle de San Ygnacio de Babocomari, y acompañado del interesado, perito agrimensor, oficiales nombrados, para continuar la medida por el mismo rumbo y á los veinte y un dias del mismo mes y año, hice reconocer de nuevo la cuerda de á cincuenta varas usuales y reconocida que fué se amarraron sus extremos en dos astas y tendida

Sello cuarto.  
Una cuartilla.

[SEAL.]

Para los años  
de 1831 y 32.

la cuerda, se midieron y contaron por el mismo rumbo doscientos cuarenta y tres cordeles que remataron encima de una loma que da vista al viento sur surueste en donde se suspendió la medida por lo fragoso de la tierra muchas y profundas cañadas que se presentaban por el rumbo de esta medida, por lo que fué de necesidad por mi y por el perito agrimensor hacer la regulacion de cincuenta y siete cordeles mas para el completo del costado de tres sitios para ganado mayor, terminando esta regulacion en el ojo de la Agua Caliente frentero de la Sierra de Santa Rita al pié de una loma pelona en donde mandé poner mojonera esquina, que dá vista

97 á la falda espresada Sierra y insinuado ojo de la Agua Caliente y desde dicho punto por seguir la fragocidad del terreno y profundas cañadas para dar la cabecera de estos sitios por mi y por el perito agrimensor a es cuadro de la medida ya espresada por el viento referido regulamos por el viento Norueste cuarto al Nornorueste para Sureste cuarto al Sursurueste, Sesenta cordeles hasta el pié de un alamito que queda da en un pequeño valle al pié de la enunciada Sierra de Santa Rita y para el completo de la cabecera o cuadra por el viento opuesto sursu

Sello cuarto.  
Una cuartilla.

[SEAL.]

Para los años  
de 1831 y 32.

rueste cuarto al sueste para el Nornoruesta cuarto al Norueste se regularon los ostros cuarenta cordeles que terminaron en una loma que tenia varios encinos en donde mandé que pusieren las correspondientes mojoneras con lo que con estos tres sitios para ganado mayor y el medido del dia anterior se completaron cuatro sitios: y por ser mas del medio dia mandé nos retirasemos para la mojonera del centro como en efecto habiendo llegado á la espresada mojonera del frente de la Cienega de San Ygnacio del Babocomari hecho reconocer de nuevo la cuerda de cincuenta varas y amarrados sus extremos á las espresadas dos astas tendida la cuerda por el rumbo

98 ueste Sueste para Este Norueste se midieron y contaron Setenta y cuatro cordeles que terminaron encima de unas lomas con inmediacion á la punta de la Agua en donde por ser ya noche se concluyó la medida de este dia retirandonos todos á descansar, lo que pongo por diligencia firmandolo con el

interesado perito agrimensor oficiales nombrados y testigos de asistencia de que doy feé.

Por ALEJANDRO FRANCO,  
RAMON ROMERO,  
YGNACIO ELIAS,  
JUAN NEPONUCENO FELIS,  
LORENZO SORTILLON,

Por ANDRES MONTOYA y

Por mi PABLO ELIAS,

Por ANTONIO CAMPOA y  
MAURICIO NEIRO,

Sello cuarto.  
Una cuartilla.

[SEAL.]

Para los años  
de 1831-32.

FRANCISCO GAUNA,  
YGNACIO ELIAS GONZALES,  
JOSÉ DE CABALLERO.

Asistencia :

RAMON ROMERO.

Asistencia :

FRANCISCO GAUNA.

En el referido puesto y á los veinte y dos dias del mismo mes y año. Yo el Juez comisionado el interesado perito agrimensor y demas oficiales nombrados hecho reconocer la cuerda de cincuenta varas y el rumbo del dia anterior por este mismo rumbo tendida la cuerda se midieron y contaron, veinte y seis cordeles para el completo de cien cordeles para el costado de un sitio de ganado mayor y por el mismo rumbo pasando la cuerda por ensima de varias lomas y cañadas se midieron y contaron trescientos cordeles pasando á los ultimos por un valle con inmediacion á los Tanques del ojo

99 de Agua y terminando estos arriba de los espresados Tanques, en una loma pedregosa endonde mandé poner mojonera esquina con lo que se completó el costado de los otros cuatro sitios para ganado mayor en donde puesto el Agujon por el perrito agrimensor, puesta la cuerda escuadra y formando con el rumbo anterior un angulo recto ó de noventa grados, reconocida la cuerda y tendida por el rumbo Sursurueste cuarto al Sueste para el Nornorueste cuarto al norueste, se midieron y contaron cuarenta cordeles correspondientes á los del anterior cabesiado de los

Sello cuarto.  
Una cuartilla.

[SEAL.]

Para los años.  
de 1831 y 32.

otros cuatro sitios, terminando estos encima de unas lomas pelonas en donde mandé poner mojonera esquina y volviendo al centro de la medida de esta cabesera por el rumbo opuesto Nornorueste cuarto al Norueste para el sursurueste cuarto al Sueste se midieron y contaron sesenta cordeles para el completo

de los cien cordeles terminando estos en la cima de un serro muy encumbrado con lo que se concluyó la medida efectuandose el total de los ocho sitios para ganado mayor registrados por el Ciudadano Ygnacio Elias y su hermana Da. Eulalia ; y dandose por recibido, quedó conforme con las espresadas medidas, advertido que oportunamente señalara sus linderos de cal y canto segun está prevenido y para constancia lo firmó con migo y todos los que supieron con los de mi asistencia con quienes actuo por receptoría á falta de escribano segun derecho.

Por ALEJANDRO FRANCO,  
RAMON ROMERO,  
YGNACIO ELIAS,  
LORENZO SORTILLON,

Por ANDREZ MONTOYA y

Por mi PABLO ELIAS,

Por ANTONIO CAMPOA y  
MAURICIO NEIRO,  
FRANCISCO GAUNA,  
JUAN NEPOMUCENO FELIS,  
YGNACIO ELIAS GONZALES,  
JOSÉ DE CABALLERO.

Sello cuarto.  
Una cuartilla.

[SEAL.]

Para los años  
de 1831 y 32.

Asistencia :

RAMON ROMERO.

Asistencia :

FRANCISCO GAUNA.

Yncontinenti procedió el Alcalde al correspondiente avaluo del terreno por medio de peritos inteligentes, que lo fueron los ciudadanos Pablo Elias y Ramon Romero, quienes verificaron dicho acto segun sus praticos conocimientos, previo juramento que otorgaron, y con arreglo á las superiores disposiciones de la materia, Justipreciando en trescientos ochenta pesos, por tener seis sitios agua corriente á razon de sesenta pesos cada uno ; y dos por ser aridos y secos á diez. Con este avaluo el Alcalde lo sacó al pregon en solicitud de postores por treinta lias consecutivos desde el 30., de Octubre de 1828 hasta el 28 de Noviembre del mismo año. No resultó ninguno ; concluyó el espediente y con oficio de 30, de Noviembre se remitió á la Tesoreria general para practicar en ella las demas diligencias hasta su remate. Con decreto de 19., de Diciembre pasó la citada al conocimiento del promotor Fiscal cuyo pedimento es el que á la letra sigue.

Sor. Tesorero General :—Este espediente contiene la mensura de ocho sitios de tierra para cria de ganado mayor y caballada practicada por el Alcalde de Santa Cruz en los parajes de San Ygnacio del Babocomari. Nada encuentro en contrario para que dejen de

adjudicarse á los pretendientes sino es que ecceden del numero á que pueden concederse por el

Sello cuarto.  
Una cuartilla.

[SEAL.]

Para los años  
de 1831 y 32.

articulo 21 del decreto del 20 de Mayo de 1825, empero si V. S. está asegurada de los requisitos que espresa el 22.—Soy de opinion que se rematen en favor de los registrantes, á menos que no aparesca otro mejor postor. Alamos Diciembre 20 de 1828.

FELIPE GIL.

Y habiendose conformado la Tesoreria general con el preinserto pedimento Fiscal por auto de 22, de Diciembre, procedió á las tres públicas almonedas en el mismo dia 22, el 23 y 24 en solicitud de postores, y no habiendo resultado ninguno, quedaron rematados los ocho sitios de tierra para cria de ganado mayor y caballada en el puesto de San Ygnacio de Babocomari á favor del ciudadano  
102 Ygnacio Elias y Dona Eulalia Elias como se Justifica de la 3a. almoneda que sigue.

3a. Almoneda.—En la nominada ciudad de la concepcion á los veinte y cuatro dias del mismo mes y año hallandose reunidos el señor presidente y vocales de la espresada Junta de almonedas, dispusieron se evacuase la tercera y remate de los terrenos que menciona este espediente, lo cual se hizo en la misma conformidad que los dos anteriores, con solo añadir el pregonero que en este momento hade quedar celebrado el remate. Y habiendo dado la plegaria de las doce de este dia, sin que ocurriese postor alguno dijo por último el pregonero en alta voz, á la una, á las dos, á las tres :

Sello cuarto.  
Una cuartilla.

[SEAL.]

Para los años  
de 1831 y 32.

que se remata, que se remata, que se remata : que buena, que buena, que buena pro les haga á Dn. Ygnacio y Dona Eulalia Elias. En tales terminos se concluyó este acto quedando pública y solemnemente rematados á favor de dichos interesados los ocho sitios de tierra para cria de ganado mayor y caballada en el paraje nombrado San Ygnacio del Babocomari Jurisdiccion del presidio de Santa Cruz, en la cantidad de trescientos ochenta pesos as i que fueron avaluados. Y para la debida constancia se pone esta diligencia que firmaron los Señores Presidente y vocales de la  
103 Juntacon el Ciudadano Capitan Ygnacio Elias como apoderado de los interesados.

GAJIOLA.

ALMADA.

GIL.

YGNACIO ELIAS GONZALES.

En seguida procedió el apoderado Capitan ciudadano Ygnacio Elias Gonzales á enterar en Tesoreria los trescientos ocenta pesos en

que fueron avaluados y rematados los ocho sitios de tierra del puesto del Babocomari, como se acredita de la certificacion que á la letra sigue.

Nicolas Maria Gajiola Tesorero General de las rentas del Estado de Occidente—Certifico que al folio 3 vuelta del manual de esta

Sello cuarto.  
Una cuartilla.

[SEAL.]

Para los años  
de 1831 y 32.

Tesoreria del corriente año se halla sentada con esta fha. la partida siguiente.

Cargo en mercedes de tierras trescientos ochenta pesos que enteró el Capitan D. Ygnacio Elias á nombre de Dn. Ygnacio y Da. Eulalia Elias vecinos de Arispe, por la merced de ocho sitios de tierra para cria de ganado mayor y caballada en el paraje nombrado San Ygnacio del Babocomari Jurisdiccion del presidio de Santa Cruz, avaluados en la indicada cantidad que se remataron á su favor sin opositor alguno en Junta de almonedas celebrada en esta Tesoreria el dia 24 de Diciembre procsimo pasado. \$380.00.

104

GAJIOLA.

YGNACIO ELIAS GONZALES.

Y para que conste doy la presente en Alamos á ocho de Enero de mil ochocientos veinte y nueve anos.

NICOLAS MARIA GAJIOLA.

Agregada la preinserta certificacion original al espediente de la materia, quedó este concluido con todos los requisitos y formalidades que previenen las leyes relativas, custodiandose en esta Tesoreria general para perpetua constancia.

Por tanto usando de las facultades que me conceden

Sello cuarto.  
Una cuartilla.

[SEAL.]

Para los años  
de 1831 y 32.

las leyes, por el presente y á nombre del Estado Soberano de Sonora, confiero merced en forma de derecho, de ocho sitios de tierra para cria de ganado mayor y caballada que comprende el puesto nombrado San Ygnacio del Babocomari, sito en jurisdiccion del presidio de Santa Cruz á favor del ciudadano Ygnacio Elias y Da. Eulalia Elias, á quienes concedo, doy y adjudico dicho terreno por via—de venta-, y con las calidades firmeza y subsistencia que establecen las leyes, para si, sus hijos, herederos y subcesores, con todas sus entradas, salidas, usos, costumbres, servidumbres, maderas, montes, pastos, arguas, agujajes, abrevaderos y demas que les correspondan; con la precisa calidad y terminante condicion de que

105

habe de mantener poblados y amparados dichos sitios, sin que

esten despoblados, desiertos ni desamparados por tiempo alguno, bajo el apercivimiento

Sello cuarto.  
Una cuartilla.

[SEAL.]

Para los años  
de 1831 y 32.

de que si verifica su total abandona por espacio de tres años consecutivos y hubiere alguna persona que los denunciare, en tal evento con previa calificación del hecho se declararán por baldíos, y se adjudicarán de nuevo á favor del mejor postor, exceptuándose como es justo aquellos casos en que el abandono sea por notoria invasión de enemigos y por solo el período de semejantes acontecimientos. Previeniéndose como estrechamente se previene á los referidos ciudadanos Ygnacio Elias y Da. Eulalia Elias, y á sus herederos y subcesores, que habrán de sujetarse, y limitarse al terreno, pertenencias, terminos y linderos señalados individualmente en las preinsertas diligencias de medidas: observando y dando su esacto cumplimiento. al arto. 30., de la ley numero 30., de 20., de Mayo de 1825, que les impone la obligación de mantener en sus terminos linderos, mojoneras de cal y canto, bajo la multa de veinte y cinco pesos que se les esesijirá si contraviuieren, para los

Sello cuarto.  
Una cuartilla.

[SEAL.]

Para los años  
de 1831 y 32.

106 fondos del comun, construyendose por el respectivo Juez de las espresadas mojoneras de cuenta de los interesados. Y ordeno y mando, á Juezes, Justicias y autoridades locales que al presente son y en adelante, fueren, del partido de esta capital, que en obsequio de la buena y pronta administracion de Justicia y en cumplimiento de las leyes de la materia, no permitan que los referidos interesados ni sus sucesores, sean de ninguna manera perturbados inquietados, ni molestados, en el libre uso, ejercicio propiedad, dominio y posesion de los mencionados ocho sitios de tierras que comprende el puesto nombrado San Ygnacio del Babocomari, antes si zelarán y cuidarán constantemente y con la mayor vigilancia y actividad que sean amparados y mantenidos siempre en la quieta y pacifica posesion que les corresponde, con legitimo derecho, para que de este

Sello cuarto.  
Una cuartilla.

[SEAL.]

Para los años  
de 1831 y 32.

modo puedan libremente, vender, cambiar, permutar donar, traspasar, ceder y enagenar dichos ocho sitios á su arvitrio y libre eleccion como dueños propietarios absolutos." En cuyos terminos espedi el presente titulo de merced en forma, á favor del Ciudadano Ygnacio Elias y Doña Eulalia Elias y secessores, entregandoseles para su resguardo con previa toma de razon en el correspondiente libro. Dado en la Capital de Arispe á los veinte y cinco dias del mes de Diciembre de mil ochocientos treinta y

dos años: autorizado y firmado por mi, y sellado con el sello de esta Tesoreria general por ante los infrascritos testigos de mi asistencia, á falta de Escribano que no lohay. Segun derecho. Enmendado para e E. de cincuenta el cus Entrerengiones del vale.

[SEAL.]

JOSÉ MARIA MENDOZA.

Asisa :

Assa :

LUIS CARRANCO.

BARTOLO MIRANDA.

Queda tomada razon delopresente titulo al folio 11, del correspondiente libro que ecsiste en esta Tesoreria general.

108 Sello cuarto.  
Una cuartilla.

[SEAL.]

Para los años  
de 1833 y 34.

N. 762.—Mediante q. los interesados en quieness fueron rematados en 18 de Abril y 24 de Diciembre de 1828, los terrenos de San Rafael del Valle, San Juan de las Boquillas y Nogales y San Ygnacio del Bavoquemari, sitios en jurisdiccion del presidio de Santa Cruz, ciudadanos Rafael Elias por el primero de dhos. terrenos, Capitan Ygnadio Elias Gonzales y Nepomuceno Felis por el Segundo, Ygnacio y Eulalia Elias por el tercero; han acreditado su inculpabilidad en q. no se les espudiesen los respectivos titulos de merced por la Tesoreria gral. del Estado q. fué unido, de cuya oficina los solicitaron desde antes del 10. de Julio de 1830, procederá V. S. á expedirles dichos titulos de gratis de conformidad con lo dispuesto por el decreto numero 27 de 11 de Agosto de 1831.

Dios y Libertad.

Arispe 29 de Abril de 1833.

YGNACIO DE BUSTAMANTE.

LUCAS RODRIGUEZ, *official* 1°.

Sr. Tesorero gral. del Estado.

Es copia.

Arispe 8 de Mayo de 1833.

JOSÉ MARIA MENDOSA.

(Endorsed :) No. 4. Exhibit A. Original title rancho of San Ignacio del Babocomari. Filed September 2d, 1879. John Was-  
son, U. S. sur. general. 3. Journal, pages 141-153. Re-  
109 ceived for record in my office, at Tucson, A. T., by the hands  
of Col. F. Ronstadt, for the parties interested, on the 17th day  
of November, A. D. 1865, at 8 o'clock a. m., and recorded on pages  
33 to 42, inclusive, of Record Book of Titles to Land from the Mex.  
Gov't. George P. Hart, recorder.

(Endorsed :) Filed in the office of the clerk, court of private land  
claims, January 26, 1894. Jas. H. Reeder, clerk, by R. L. Long,  
deputy.

[Endorsed :] Case No. 3½. F. No. 3. (Exhib. A.) Titulo. Filed  
Jan. 26, 1894. James H. Reeder, clerk, by R. L. Long, dep.



110

## EXHIBIT B.

*Translation of Original Title Papers.*

Title of grant of eight square leagues of land for the raising of stock, including the place named San Ignacio del Babacomori, in the jurisdiction of the presidio of Santa Cruz, issued by the treasury general of Sonora in favor of the citizen- Ignacio Elias and Dona Eulalia Elias, the first a resident of Rayon and the second of Arizpe.

Second seal [L. S.] for the years 1831 and 1832, twelve reales.

Jose Maria Mendoza, treasurer general of the State of Sonora (free, sovereign, and independent):

Whereas, article 1th of the sovereign decree number 70 of the General Congress of the Union dated 4th day of August, 1824, concedes to the States, the revenues, which in said law are not reserved by the Federal Government, and one of these being the lands of the respective districts, to which they belong; for the concession of which lands, the honorable constituent congress of the State- of Sonora and Sinaloa united passed the law of the 20th of May, 1825, No. 30, and the successive legislatures passed other laws and decrees in relation to the matter. And the citizen- Ignacio and Eulalia Elias having made formal denouncement before this treasurer's office of the late united State- of the lands named San Ignacio del Babacomori, situated in the jurisdiction of the presidio of Santa Cruz; the said petitioners being the first, a citizen of the village of Rayon and the second of this capital;

The said denouncement was admitted according to the law  
111 on the 1st of July 1827; and the writing of denouncement and the other proceedings in relation thereto are as follows:

To the treasurer general:

We, Ignacio Elias and Eulalia Elias, present ourselves before your honor, respectfully representing; that needing a tract of land for our stock, we, denounce, in company with Don Rafael Elias, Captain Ignacio Elias and Don Nepomuceno Feliz, the vacant tract of land adjoining the rancho of San Pedro, situated in the jurisdiction of the presidio of Santa Cruz, as far as the place of Tres Alamos, obligating ourselves to pay to the nation the corresponding tax, with all other matters that justice may require, until the title and confirmation thereof shall be obtained; wherefore, your honor will be pleased to consider the vacant tract referred to, petitioned for; wherefore, we pray your honor, to be pleased to order as we have prayed for, in which we will receive favor.

Arizpe, March 12th, 1827.

In the absence of, and at the request of—

DON IGNACIO ELIAS,  
JOAQUIN ELIAS,  
EULALIA ELIAS.

COSALA, *July 1st, 1827.*

The alcalde of Santa Cruz will proceed in the matter under the authority which is conferred on him without prejudice to a third party who may have a better right first citing the colindantes to the measurement, valuation and publication for thirty days consecutively, of the lands referred to in the denouncement, subject to the sovereign decree of the hon. constituent congress of the State, number 30 of the 20th of May, 1825, and to the regulations accompanying the same. And when these proceedings shall have been taken, let the same be transmitted to this treasurer's office  
112 notifying the bidders, to appear personally or by their agents at the sale to be made at said office after the required three customary publications.

The treasurer general of the State, Nicolas Maria Gajiola, thus decreed and signed.

GAJIOLA.

AT THE PRESIDIO OF SANTA CRUZ.

On the 5th day of the month of October 1828, in view of the foregoing decree of the senior treasurer general, let what is ordered by the said decree of 1st July 1827 be complied with; wherefore, for this purpose, with the citation of the interested party, the colendantes, the surveyor and the necessary officers, which are to be named, I shall proceed to the hacienda of San Pedro, for the purpose of measuring the lands petitioned for by the petitioners. The citizen Alejandro Franco, constitutional alcalde of the presidio of Santa Cruz, by this act thus determined and signed with the assisting witnesses with whom he acts by special authority, in the absence of a notary public according to the law.

For ALEJANDRO FRANCO,  
RAMON ROMERO.

Assistant:  
RAMON ROMERO.

Assistant:  
FRANCO GAUNA.

Wherefore the alcalde surveyor, after summoning the colendantes, proceeded to the appointment of tallymen, measurers and recorders, who were the citizens Lorenzo Sortellon, Andrez Mentoya, Pablo Elias, Antonio Campoa and Mauricia Neiro, who accepted the appointments and made oath that they would discharge their several duties faithfully and legally and the alcalde made the survey which appears in the following proceedings:

At said place, the said day, month and year in order to  
113 proceed to the survey the parties in interest assistants appointed and attending witnesses being present, I ordered a cord of 50 varas measured and its extremities tied to two poles. The surveyor citizen Jose Maria Caballero proceeded to said survey and setting up the compass took a course east, northwest quarter east, to the west southwest quarter west, where I had a cross-monu-

ment placed, and from said point, through said point, there were measured and counted one hundred cords which terminated in a small valley near some bald hills (lomas pelonas) where I caused a monument to be placed, and as it was now late, I ordered the cord gathered up and that the assistants and others withdraw to rest until the following day, when the measurement would be continued, which I enter in these minutes and sign together with my assistants and others in interest who accompanied me, to which I certify.

For ALEXANDRO FRANCO,  
RAMON ROMERO,  
IGNACIO ELIAS,  
JUAN NEPOMUCENO FELIZ,  
IGNACIO ELIA GONZALES,  
JOSE DE CABALLERO,  
LORENZO SORTILLON,

For ANTONIO CAMPOA, AND  
MAURICIO NEIRO,  
FRANCISCO GAUNA,

For ANDRES MONTTOYA,

And for myself, PABLO ELIAS.

Witness:

RAMON ROMERO.

Witness:

FRANCISCO GAUNA.

114 In the place where I ordered the second monument put, called the valley of San Ignacio de Babbocomori and accompanied by the party in interest, the surveyor, the assistants appointed, for the purpose of continuing the survey in the same direction and on the 21st day of said month and year, I caused the cord of 50 usual varas to be examined and when examined, its extremities were tied to the two poles and the cord having been stretched, there were measured and counted in the same direction 243 cords which terminated on a hillock (loma) which looks south-southwest where the survey was suspended on account of the roughness of the ground and the many deep valleys which occur in the direction of this survey, for which reason it was necessary for me and the surveyor to estimate 57 cords more to complete the side of the three sitios for cattle. This estimated distance terminating at the hot spring in front of the Santa Rita Mts. at the foot of a bald hill (loma pelona) where I ordered a corner monument placed which looks toward the slope of said mountain and hot spring and from said point on account of the roughness of the ground and the deep valleys, in order to measure the side of these sitios and to square the measurement already stated in said direction, the surveyor and myself estimated toward the northwest quarter north-northwest to the southeast quarter south-southwest 60 cords to the foot of a small cottonwood tree in a small valley at the foot of said Santa Rita mountains and to complete the side of the square in the opposite direction south-southwest quarter southeast to the north-northwest quarter

115 northwest the remaining 40 cords were estimated and ended on a hillock (loma) that has several oak trees, where I ordered the corresponding monuments placed which with these three sitios for cattle and the one surveyed the day before, 4 sitios were completed and being now past midday, I ordered that we return to the centre monument and when we had arrived at said monument in front of the cienega of San Ignacio Babocomori and had again examined the cord of 50 varas and tied its extremities to the said two poles and stretched the cord in the direction west-southeast to the east-northwest, there were measured and counted 74 cords which terminated upon some hillocks (lomas) near the punta de la agua where as it was now night, the survey of this day was terminated all of us withdrawing to rest, which I enter in these minutes and sign together with the party in interest, the surveyor, appointed assistants and attendant witnesses, to which I certify.

For ALEXANDRO FRANCO,  
RAMON ROMERO,  
IGNACIO ELIAS,  
JUAN NEPOMUCENO FELIZ,  
IGNACIO ELIAS GONZALES,  
JOSE DE CABALLERO,  
LORENZO SORTILLON,

For ANTONIO CAMPOA, AND  
MAURICIO NEIRO,  
FRANCISCO GAUNA,

For ANDRES MONTOTOYA,

And for myself, PABLO ELIAS.

Witness :

RAMON ROMERO.

Witness :

FRANCISCO GAUNA.

116 At said place on the 22nd day of said month and year I, the judge commissioner, the party in interest, the surveyor and appointed assistants, having caused the cord of 50 varas and the course of the preceding day to be examined, having stretched the cord along this same course, there were measured and counted 26 cords to complete the 100 cords for the side of one sitio for cattle and in the same direction the cord passing over several hillocks (lomas) and valleys (canadas) there were measured and counted 300 cords, the last ones passing along the valley near the tanks of the spring of water and ending above said tanks on a rocky hill where I ordered a corner monument placed which completed the side of the other 4 sitios, where the surveyor having set up his compass, placed the cord and the square and forming from the preceding course, a right angle or angle of 90 degrees, having examined the cord and stretched it in the direction south-southwest quarter southeast to the north-northwest quarter northwest, there were measured and counted 40 cords corresponding to those of the former side of the other 4 sitios, these latter terminating upon some bald hills (lomas) where I ordered a corner monument placed and returning to the centre of the

measurement of this side in the opposite direction north-northwest quarter northwest to the south-southwest quarter southeast, there were measured and counted 60 cords to complete the 100 cords terminating on the summit of a very high hill, with which the survey was terminated, completing the total 8 sitios for cattle, registered by the citizen Ignacio Elias and his sister Dona Eulalia, 117 which he received being satisfied with said survey; he being informed that in due time he should mark its boundaries by monuments of stone and mortar as is provided; in witness whereof he signed with me and all those who knew how to write together with the assisting witnesses, with whom I act by special authority in the absence of a notary public according to law.

For ALEXANDRO FRANCO,  
 RAMON ROMERO,  
 JUAN NEPOMUCENO FELIZ,  
 IGNACIO ELIAS,  
 IGNACIO ELIAS GONZALEZ,  
 JOSE DE CABALLERO,  
 LORENZO SORTILLON,  
 For ANTONIO CAMPOA, AND  
 MAURICIO NEIRO,  
 FRANCISCO GAUNA,  
 For ANDRES MONTOYA,

And for myself, PABLO ELIAS.

Witness:

RAMON ROMERO.

Witness:

FRANCISCO GAUNA.

Whereupon the alcalde proceeded to the corresponding valuation of the land appointing intelligent experts for that purpose who were the citizens Pablo Elias and Ramon Romero, who made the valuation to the best of their practical knowledge, after taking the necessary oath and in accordance with the regulations in relation thereto, they valued the tract in the sum of \$380, for the reason that six sitios of the tract contained running water, at the rate of 118 \$60 per sitio and two sitios thereof being arid, they valued at \$10 per sitio; upon this valuation the alcalde offered the tract for sale publishing the same for thirty consecutive days, inviting purchasers to wit: from the 30th of Oct. 1828 until the 28th day of November of the same year; and no purchasers appearing the expediente was concluded and by letter of the 30th of November, the same was sent to the treasurer's office for the necessary proceedings thereon until the date of the sale.

By the decree of the 19th of December the same was referred to the attorney general that he should have knowledge of the same and whose request is as follows:

To the treasurer general:

This expedient contains the survey of 8 sitios of land for breeding horned cattle and horses, executed by *by* the alcalde of Santa Cruz

in the places of San Ignacio del Babocomori; I find nothing in the proceedings to prevent adjudication of the land to the petitioners, unless it be that the quantity exceeds that mentioned in article 21 of the decree of the 20th of May, 1825; but if your honor is satisfied as to the requirements recited in the 22nd I am of the opinion that the land be sold to the denouncers if there should be no one willing to pay a higher price therefor *the same*.

Alamos, December 20th, 1828.

FELIPE GIL.

And the treasurer general having been satisfied with the foregoing request of the attorney general, by proceedings of the 22nd, the three public almonedas of the 22, 23, and 24, were made in  
119 viting purchasers and none having come forward, the 8 sitios of land for breeding of horned cattle and horses at the place of San Ignacio del Babocomori were sold to the citizen Ignacio Elias and Dona Eulalia Elias as appears by the *three* almoneda which is as follows:

3rd almoneda, in the said city of Concepcion on the 24th day of the said month and year at a meeting of the president and members of the said junta de almonedas, the third almoneda and sale of the said lands was ordered which was made in the same way as the two foregoing with the sole difference that it was stated in addition by the auctioneer that this time the sale had to be made; and the noonday prayer of this date having been offered without any purchasers appearing the auctioneer finally proclaimed in a loud voice, "Once, twice, three times; let it be sold, let it be sold, let it be sold; sold to Don Ignacio and Dona Eulalia Elias." In which terms said act was concluded and said 8 sitios of land for breeding horned cattle and horses were publically and solemnly sold to the said interested parties at the place of San Ignacio del Babocomori in the presidio of Santa Cruz, for the sum of \$380 at which the tract was valued.

And in due witness whereof these proceedings were made and were signed by the senores, president and members of the junta with the citizen Capt. Ignacio Elias as agent for the interested parties.

GAJIOLA.

ALMADA.

GIL.

IGNACIO ELIAS GONZALEZ.

Whereupon the agent, Capt. Ignacio Elias Gonzalez, proceeded to deposite in the treasury office the \$380 at which the said tract of land in the place of Babocomori was valued and sold, as is shown by the following certificate, copied literally:

120 I, Nicholas Maria Gajiola, treasurer general of the revenues of the State of the West, certify: that in folio 3 (reverse) of the pamphlet of this treasury for the current year, there is found the following entry under this date:

"Charged to grants of land, \$380, which was paid by Capt. Ignacio Elias Gonzales, in the name of Don Ignacio and Dona Eulalia Elias, residents of Arizpe, for a grant of 8 sitios of land for breeding horned cattle and horses, at the place named San Ignacio Babocomori in the jurisdiction of the presidio of Santa Cruz, valued at the sum stated, for which it was sold to them without any opposition whatever in the junta de almonedas celebrated in this treasury on the 24th of December last passed. \$380.00.

GAJIOLA.

IGNACIO ELIAS GONZALEZ.

In witness whereof, I give this at Alamos on the 8th of January, 1829.

NICOLAS MARIA GAJIOLA.

The foregoing original certificate having been attached to the expediente in the matter, the same was concluded with all requisites and formalities which the laws therein prescribed remaining in the treasurer general for perpetual evidence.

Wherefore in the exercise of the authority conceded to me by law, by these presents and in the name of the sovereign State of Sonora, I grant in due form of law, 8 sitios of land for the breeding of horned cattle and horses, embraced in the place named San Ignacio del Babocomori, situate in the jurisdiction of the presidio of Santa Cruz, in favor of the citizen Ignacio Elias and  
121 Dona Eulalia Elias, to whom I grant, give and adjudicate said land by way of sale and with the conditions, security, permanency established by law, for themselves, their children, heirs and successors, with all their entrances, exits, uses customs, servitudes, woods, pastures, waters, watering places and all other things thereto pertaining; under the positive qualification and precise condition that they have to keep the said sitios occupied, settled and protected, the same not to be abandoned or deserted nor left unprotected for any time whatever and if the same should be abandoned totally for the space of three consecutive years, and there should be some one else who should denounce the same, in such event, with a previous declaration to that effect, the same shall be pronounced vacant, and shall be adjudicated anew to the highest bidder: excepting as is just those cases in which the abandonment is due to the notorious invasion of enemies and only for the period of such occurrences. Requiring as I strictly require that the said citizens Ignacio Elias and Dona Eulalia Elias and their heirs and successors, that they are to subject and limit themselves to the land, its appurtenances, metes and bounds set out specifically in the proceedings of the measurements hereinbefore set out; observing and giving exact fulfillment to article 30 of law # 20 of the 20th of May, 1825, which imposes the obligation upon them, of maintaining at their metes and boundaries, monuments of stone and mortar under a fine of \$25, which shall be exacted from them if they should fail, to be paid into the municipal fund, said *said* monuments to be erected by the said judge at the expense of the interested parties. And I



122 order and command the judges, justices, and local authority, who *who* are at present in office, or who may hereafter be in office in the district of this capital that for the sake of the good and prompt administration of justice and in compliance with the laws in the matter, they shall not permit the interested parties nor their successors being in any way disturbed, annoyed or molested in the free use, exercise, ownership dominion and possession of the said 8 sitios of land embraced in the said place called San Ignacio del Babocomari, but that on the contrary they shall watch and constantly take care with the greatest diligence that they be protected and maintained always in the quiet and peaceful possession to which they are entitled to by legitimate right under which they may freely sell, exchange, barter, donate, transfer, cede and alienate the said 8 sitios at their free will and election as absolute owners thereof. In which terms, I issue the present formal title in favor of the citizen Ignacio Elias and Dona Eulalia Elias and their successors, it being delivered to them for their security, having first made the toma de razon thereof in the corresponding book.

Given in the capital of Arizpe on the 25th day of December, 1832; authorized and signed by me and sealed with the seal of this treasury general's before the undersigned assisting witnesses in the absence of a notary public; there being none according to law.

JOSE MARIA MENDOZA.

[L. s.] Asst.: Asst.: [RUBRIC.]  
LUIS CARRANEO. BARTOLO MIRANDA.

Toma de razon is taken of this title at folio 11 of the corresponding book in the office of the treasurer general.

[RUBRIC.]

123 Corrections-for-c-C-of-of fifty-the-their-interlineated-of the. They are valid.

Fourth seal, 64 cents [L. s.] for the years 1833 and 1834.

No. 762. Inasmuch as the parties in interest to whom were sold on the 18th of April and the 24th of December, 1828, the lands of San Rafael del Valle, San Juan de las Boquillas Y Nogales and San Ignacio del Babocomari, situated in the jurisdiction of the presidio of Santa Cruz; the first of said lands to citizen Rafael Elias, the second to Capt. Ignacio Elias Gonzalez and Nepomuceno Feliz and the third to Ignacio and Eulalia Elias have shown that it was not their fault that the several grant titles were not issued to them by the treasury general of the late United States in which office they solicited them since before the 10th of July, 1830, your excellency will proceed to issue to them the said titles gratis, in conformity with the provisions of decree No. 27 of the 11th of August, 1831.

God and liberty.

Arizpe, April 29, 1833.

IGNACIO DEL BUSTAMENTE.

LUCAS RODRIGUEZ,

Chief Clerk.

To the treasurer general of the State.

It is a copy.

Arispe, May 8, 1833.

JOSE MARIA MENDOZA. [RUBRIC.]

124-126

*Certificate.*

I hereby certify that the foregoing translation of the title papers of the San Ignacio del Babocomori grant is true and correct and is my official translation.

EUSEBIO CHACON,

*Interpreter & Translator, Court of Private L'd Clms.*

(Endorsement:) Filed in the office of the clerk, court of private land claims, March 29, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

(Here follow photographs marked Pl'ffs' Exhibits 1 to 11, incl.)

127

Form No. 2.

The Western Union Telegraph Company, incorporated; 21,000 offices in America; cable service to all the world. Thos. T. Eckert, president and general manager.

Receiver's No.	Time filed.	Check.
----------------	-------------	--------

Send the following message subject to the terms on back hereof, which are hereby agreed to:

TUCSON, *Marzo 27*, or 1894.

To Sr. Victor Aguilar, Tesorero Gral. de Estado, Hermosillo, Sonora:

Le suplis se sirva decirme por esta via contestacion pagada a la mayor brevedad si expediente San Ygnacio del Babocomori esta formado en papel debidamente habilitado.

No. 1.

(Signed)

GEO. HILL HOWARD.

*Translation Telegram No. 1.*

TUCSON, ARIZONA, *March 27th*, 1894.

Sr. Victor Aguilar, treasurer general of the State, Hermosillo, Sonora:

I beg you please let me know by this means, reply, paid for, as soon as possible, whether expediate San Ygnacion del Babocomori is extended upon paper duly habilitated.

GEO. HILL HOWARD.

Endorsement: Case No. 31, F. 27. Telegrams from Tr. Ge'l. Filed in the office of the clerk of the court of private land claims Mar. 28, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

128

Form No. 168.

The Western Union Telegraph Company; 21,000 offices in America;  
cable service to all the world.

This company transmits and delivers messages only on conditions limiting its liability, which have been assented to by the sender of the following message.

Errors can be guarded against only by repeating a message back to the sending station for comparison, and the company will not hold itself liable for errors or delays in transmission or delivery of unrepeatd messages beyond the amount of tolls paid thereon, nor in any case where the claim is not presented in writing within sixty days after the message is filed with the company for transmission.

This is an unrepeatd message, and is delivered by request of the sender under the conditions named above.

NORVIN GREEN, *President.*

THOS. T. ECKERT,  
*General Manager.*

Received at —. M—J. 11. Collect 25 & 42. 10.35, 189—.

Dated HERMOSILLO, MEX., — 28.

To Geo. Hill Howard :

Expediente san ygnacio del babacomari esta formado en papel debidamente habilitado.

(2.)

V. AGUILLAR.

*Translation Telegram No. 2.*

M—J. 11. Collect 25 & 42.

HERMOSILLO, MEX., — 28.

Geo. Hill Howard :

Expediente San Ygnacio del Babacomari is extended upon paper duly habilitated.

V. AGUILLAR.

Endorsed : Case No. 3½, F. 26. Tel. from Jr. G'l. Filed in the office of the clerk, court of private land claims, Mar. 28, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

129

## EXHIBIT (LAND COURT) "BABACOMARI."

## EXHIBIT C.

Before the U. S. sur. general for Arizona.

In the Matter of the RANCHO OF SAN IGNACIO DEL BABOCOMARI—E.  
B. PERRIN *et al.*, Claimants.

FRANCISCO S. LEON, a witness called by the U. S. sur. general, being duly sworn, testified as follows:

Questions by surveyor general:

Question 1. What is your name, age, occupation, and place of residence?

Ans. My name is Francisco S. Leon; 60 years of age; occupation, *ranchero*, and I reside in Tucson.

Ques. 2. How long have you resided in Tucson?

Ans. I was born there and have lived there all my life.

Ques. 3. Are you personally acquainted with the rancho of San Ignacio del Babocomari, granted by the Mexican government to Don Ignacio and Dona Eulalia Elias?

Ans. I am.

Ques. 4. How long have you known said rancho?

Ans. For more than thirty years; I have travelled over it a great many times.

Ques. 5. Do you know its boundaries?

Ans. I do not; but I know that it is situated on the Babocomari creek.

Ques. 6. What do you know about the possession of said rancho?

130     Ans. I know that Don Ignacio Elias had possession of said rancho in early times and that he had much stock thereon.

Ques. 7. Do you know when the possession of said rancho was abandoned by Don Ignacio Elias, the grantee?

Ans. I cannot remember the date, but it was many years ago; it was before the time of the war with the United States.

Ques. 8. What was the cause of said abandonment?

Ans. It was abandoned on account of the Apache Indians, who burnt the ranch-house, killing the people and driving off the stock.

Ques. 9. Do you think that Elias could have with safety to himself and stock occupied the rancho at any time previous to that at which the Indians were suppressed by the American troops.

Ans. It would have been impossible, and I know that within a few years depredations have been committed by the Indians near this rancho.

F. S. LEON.

Subscribed and sworn to before me this 29th day of October, 1879, as witness my hand and seal of office.

JOHN WASSON,  
U. S. Surveyor General.

(Endorsed :) Rancho of S. Igo. del Babocomari. Deposition of F. S. Leon. Filed Oct. 29th, 1879. John Wasson, U. S. sur. gen'l. 6 Journal, vol. 1, pgs. 167, 168.

(Endorsed :) Filed March 27, 1894. James H. Reeder, clerk, by R. L. Long, dep.

[Endorsed:] Exh. C. Filed in the office of the clerk, court of private land claims, Mar. 27, 1894. Jas. H. Reeder, clerk, by ———, deputy.

131

## EXHIBIT (LAND COURT) "BABACOMARI."

## EXHIB. D.

Before the U. S. Surveyor General for Arizona.

In the Matter of the RANCHO OF SAN IGNACIO DEL BABOCOMARI—  
E. B. PERRIN *et al.*, Claimants.

SANTIAGO ESPINOSA, a witness produced on behalf of the claimants, being duly sworn by the surveyor general, deposes as follows:

Questions by surveyor general:

Question 1. What is your name, age, occupation, and place of residence?

Ans. My name is Santiago Espinosa; 77 years of age; I am a wagoner, and reside in Tucson.

Ques. 2. Are you personally acquainted with the rancho at San Ignacio del Babocomari?

Ans. I am acquainted with said rancho by having often been upon the same driving cattle, and have often passed over it and well know the locality.

Ques. 3. How long have you known said rancho?

Ans. For more than 35 years.

Ques. 4. Do you know its boundaries?

Ans. I do not. I only know that it is situated on the Babocomari creek.

Ques. 5. Do you know anything about the possession of said rancho by the grantee?

Ans. I know that Don Rafael Elias held possession of said rancho for many years, and that he continued in possession thereof until he was driven therefrom by the Apache Indians. I cannot  
132 say what year this occurred, but it was before the war with the United States.

I know that the Indians continued bad until within a few years.

his  
SANTIAGO x ESPINOSA.  
mark.

Sworn to and subscribed before me this 17th of Oct., 1879.

JOHN WASSON,  
U. S. Sur. Gen'l.

[SEAL.]

(Endorséd :) Rancho of Babocomari. Deposition of Santiago Espinosa. Filed Oct. 17th, 1879. John Wasson, U. S. sur. gen'l.  
4. Journal, vol. 1, pgs. 165, 166.

(Endorséd :) Filed in the office of the clerk court of private land claims March 27, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

OFFICE OF SURVEYOR GENERAL,  
TUCSON, ARIZONA, *March 24, 1894,*

I hereby certify that the paper attached hereto is a correct copy of the paper it purports to be a transcript of on file in this office.

[Seal U. S. Surveyor General's Office, District of Arizona.]

LEVI H. MANNING,  
*U. S. Surveyor General, District of Arizona.*

[Endorséd :) Exh. D. Filed in the office of the clerk court of private land claims Mar. 27, 1894. Jas. H. Reeder, clerk, by ———, deputy.

133

OFFICE OF SURVEYOR GENERAL,  
TUCSON, ARIZONA, *January 8th, 1894.*

I hereby certify that the paper attached hereto is a correct copy of the paper it purports to be a transcript of on file in this office.

[Seal U. S. Surveyor General's Office, District of Arizona.]

LEVI H. MANNING,  
*U. S. Surveyor General, District of Arizona.*

134

PLAINTIFF'S EX. F.

Oficio publico del Ciudadano licenciado Cipriano Pina.

Testimonio de escritura de testamento nuncupativo, del finado Señor Cura Don Juan Elias Gonzales, y compulsado por concurda la presente cópia por visto ó exhibicion de la escritura original que presentaron los interesados, y á los que se les devolvió en diez y siete fojas útiles.

135

Un sello que dice, Administracion Principal de papel sellado de Sonora—Numero ciento veinte y siete

(Stamp.)

(Notarial Seal.)

Segunda clase—Sello primero—Para actuaciones—Habilitado para el bienio de mil ochocientos sesenta y ocho y mil ochocientos sesenta

nuebe—Vale ocho pesos—Administracion principal del papel sellado en Sonora. Hermosillo, Octubre ocho de mil ochocientos sesenta y siete—Pedro G. Tato—José E. Moreno—

Cotejado y corregido  
Pina.

Dos rúbricas—Reemplazo—Ciudo. Juez de primera, instancia,—Ygnacio Santos Elias y José Maria Elias Morales nombrados primero y tercero albaceas (segun estamos informados) por nuestro finado tio el Señor Cura Vicario foraneo de esta ciudad Don Juan Elias Gonzales para cumplir su

Escrito pidiendo la  
apertura de los testa-  
mento.

última voluntad, ante V. como mejor proceda en derecho decimos: que habiendo fallecido dicho Señor nuestro tío la noche del jueves veinte, y cinco del procsimo pasado Marzo, bajo las dos disposiciones testamentarias que debidamente acompañamos en pliego cerrado.—A.V. suplicamos que habiendolas por presentadas se sirva abrirlas y publicarlas con las solemnidades legales, y elevadas que sean á instrumento público, darnos el correspondiente testimonio para cumplir con nuestra mision, como los mas que pidan los interesados; pues así es de hacerse en justicia que pedimos protestando no proceder de malicia con lo demas necesario, y reponer el  
136 papel sellado correspondiente que no se haya en el espendio de esta ciudad.

Arispe Abril tres de mil ochocientos sesenta y nueve.

YGNACIO SANTOS ELIAS.

JOSE MARIA ELIAS MORALES.

Juzgado de primera instancia del Distrito—Arispe Abril tres de mil ochocientos sesenta y nueve.

Auto del juez previniendo la practica de las diligencias de apertura. Por presentados los dos pliegos testamentarios á que se refiere, y habiendo presentado los interesados, los ultimos certificados de estar solventes con la hacienda pública, hágase la justificacion que se pretende con los testigos, á cuyo fin comparescan en este Juzgado y evacuado en la parte que baste se traiga todo para proveer. El Juez de primera Ynstancia del Distrito, así lo proveyó mandó y firmó por ante los testigos de asistencia, en este papel comun por no haber en la oficina respectiva del sello correspondiente, el que para su validacion repondrán los interesados.

CARLOS PRECIADO.

Asistencias:

BRIGIDO REYES.

FRANCISCO YRIGOYEN.

En la misma fecha, fué presente el ciudadano José Maria Elias Morales, quien bajo la protesta de ley, de conducirse con verdad en lo que supiese y fuese interrogado, ofreció hacerlo así, y

Declaracion del testigo Jose Maria Elias Morales.

Vicario Don Juan Elias Gonzales, habia manifestado al parecer, en su juicio natural, y presencia del Señor presente Juez, y demas testigos, que: en aquellos dos pliegos cerrados, se contenia su última voluntad testamentaria, reconociendo tambien su firma, y la del testador, quien falleció la noche del jueves veinte y cinco del procsimo pasado, constandole de vista verlo muerto; espresando llamarse como está dicho, de treinta y tres años de edad, casado, labrador, y vecino de esta propia ciudad,

(Stamp.)

137

(Notarial Seal.)



en lo que se afirma y ratifica, firmando con migo y los de mi asistencia.

PRECIADO.

JOSÉ MARIA ELIAS MORALES.

Asistencias:

BRIGIDO REYES.

FRANCISCO YRIGOYEN.

Acto continuo presente el ciudadano Antonio Barreda, quien bajo la protesta de ley, sobre conducirse con verdad en lo que supiese y fuese interrogado, ofreció hacerlo así, y siendolo por el pedimento citado, y habiendole manifestado el testamento y codicilo presentados, dijo; era cierto, que el Señor Cura Vicario Don Juan Elias

Gonzales, habia manifestado al parecer

en su juicio natural, y en presencia del Señor presente Juez, y demas testigos, que

en aquellos dos pliegos serrados se con-

tenia su última voluntad testamentaria, reconociendo tambien su firma y la del testador, quien falleció la noche del jueves veinte y cinco del procsimo pasado, constandole haber lo visto muerto: es-

presando llamarse como está dicho, de treinta y cuatro años  
138 de edad, viudo su empleo administrador de rentas y vecino de esta ciudad, en la que se se afirma y y ratifica firmando con migo, y los de mi asistencia.

PRECIADO.

ANTONIO BARREDA.

Asistencias:

BRIGIDO REYES.

FRANCISCO YRIGOYEN.

En la propia fecha presente el Ciudadano Eduardo Bustamante, quien bajo la protesta de ley sobre conducirse con verdad en lo que supiese y fuese interrogado, ofreció hacerlo así, y siendolo por el pedimento, citado, y habiendole manifestado el testamento y codicilo, presentados dijo; era cierto, que el Señor Cura Vicario Don Juan Elias Gonzales, habia manifestado al parecer, en su juicio natural

y en presencia del Señor Juez presente,

Declaracion del testigo y demas testigos que; en aquellos dos pliegos cerrados, se contenia su última voluntad testamentaria, reconociendo tam-

bien su firma, y la del testador, quien falleció la noche del jueves veinte y cinco del procsimo pasado, constandole haberlo visto muerto: espresando llamarse como queda dicho, de treinta años de edad, casado, de ejercicio labrador, y vecino de esta repetida ciudad, en lo que se afirma y ratifica, firmando con migo y los de mi asistencia.

PRECIADO.

EDUARDO BUSTAMANTE.

Asistencias:

BRIGIDO REYES.

FRANCISCO YRIGOYEN.

En Seguida presente el ciudadano. Santiago Villaescusa, quien bajo la protesta de ley, sobre conducirse con verdad en lo que supiese y fuese interrogado, ofrecio hacerlo asi, y siendolo por el pedimento citado; y habiendole manifestado el tes-

139 tamento y codicilo presentados, dijo era cierto que el Señor Cura Vicario Don Juan Elias Gonzales, habia manifestado al parecer, en su juicio natural y en presencia del Señor presente Juez, y demas testigos, que: en aquellos dos pliegos cerrados, se contenia su última voluntad testamentaria, reconociendo tam-

bien su firma y la del testador, quien falleció la noche del jueves veinte y cinco del procsimo pasado, constandole de vista haberlo vis to muerto: espresando llamarse como queda dicho, de cuarenta y nueve años de edad, casado, de ejercicio labrador, y vecino de esta ciudad, en lo que se afirma y ratifica firmando con migo y los de mi asistencia.

PRECIADO.

SANTIAGO VILLAESCUSA.

Asistencias:

BRIGIDO REYES.

FRANCISCO YRIGOYEN.

Presente el ciudadano Santiago Garcia, quien bajo la protesta de ley, sobre conducirse con verdad en lo que supiese y fuese interrogado, ofreció hacerlo así, y siendolo por el pedimento citado, y habiendole manifestado el testamento y codicilo presentados, dijo: era cierto que el Señor Cura Vicario Don Juan Elias Gonzales, habia

Declaracion del tes-  
tigo Santiago Garcia.

manifestado al parecer, en su juicio natural, y en presencia del Señor presente Juez, y demas testigos, que en aquellos dos pliegos cerrados, se contenia su ultima vol-

140 untad testamentaria, reconociendo tambien su firma y la del testador, quien falleció la noche del jueves veinte y cinco del procsimo pasado, constandole haberlo visto muerto; espresando llamarse como queda dicho de cincuenta años de edad, soltero, labrador, y vecino de esta misma ciudad, en lo que se afirma y ratifica, firmando con migo y los de mi asistencia.

PRECIADO.

SANTIAGO GARCIA.

Asistencias:

BRIGIDO REYES.

FRANCISCO YRIGOYEN.

En la propia fecha presente el ciudadano. Rafael Barreda, quien bajo la protesta de ley, sobre conducirse con verdad en lo que supiese y fuese interrogado, ofrecio hacerlo así, y siendolo por el pedimento citado; y habiendole manifestado el testamento y codicilos presentados dijo: era cierto que el Señor Cura Vicario Don Juan

Declaracion del tes-  
tigo Rafael Barreda.  
(Stamp.)  
(Notarial Seal.)

Elias Gonzales, habia manifestado al parecer, en su juicio natural y en presencia del Señor presente Juez, y demas testigos, que en aquellos dos pliegos cerrados, se contenia su última voluntad testamentaria, reconociendo tambien su firma y la del testador, quien falleció la noche del jueves veinte y cinco del procsimo pasado, constandole haberlo visto muerto: espresando llamarse como queda dicho de veinte y nueve años de edad, casado, de empleo pagador general, de las companías presidiales, y vecino de esta ciudad, en lo que se afirma y ratifica, firmando con migo y los de mi asistencia.

PRECIADO.

RAFAEL BARREDA.

Asistencias:

BRIGIDO REYES.

FRANCISCO YRIGOYEN.

ARISPE, *Abril cinco de mil ochocientos sesenta y nueve.*

141 En la fecha y estando concluidas las diligencias que anteceden, con escepcion de las de los Ciudadanos Mariano Morales, Miguel Vasquez, Julian Bustamante, Francisco Zarra-  
tegui y Placido Narbona, los cuales aparecen en la caratula testamentaria otorgada el primero de Julio de mil ochocientos cuarenta y uno, unos por ausentes y otros por muertos, y resultando

Anto mandando hacer la apertura de las testamen-  
tas. tambien que el finado Señor Cura Don Juan Elias Gonzales, declaró por balida y subsistente su voluntad contenida en el espresado cuaderno cerrado, de que doy fé, por ante todaslas personas que se

hallaban presentes, mediante estar los dos pliegos referidos sin la mas leve sospecha de rotura, el testamento y codicilo presentados; abranse por mi, publicandose en forma, y hecho se proveerá á lo demas pretendido. Asi yó Carlos Preciado Juez de primera Ynstancia del Distrito lo decreté, mandé y firmé, con los testigos de asistencia.

CARLOS PRECIADO.

Asistencias:

BRIGIDO REYES.

FRANCISCO YRIGOYEN.

Ycontinenti, el Juez que suscribe en presencia de los testigos examinados, abri los citatos cuadernos

Diligencia haciendola publicacion prevenida. testamentarios, constante el primero de seis fojas y el segundo de dos ambos del sello tercero, dandoles en seguida la pub-

142 licidad conveniente hasta su conclusion, que dice "Juan Elias Gonzales" y su literal tenor es el siguiente de quedoy fé.

PRECIADO.

Asistencias:

BRIGIDO REYES.

FRANCISCO YRIGOYEN.

Sello tercero dos reales, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.—En el nombre de Dios todo

Primer testamento  
otorgado en 30 de Junis  
de 1841.

legítimo matrimonio de  
Maria Dolores Romo de Vivar ya difuntos, digo: Que hallándome en-  
fermo por decreto de la Providencia, pero en mi entero juicio, memoria  
y entendimiento natural, creyendo como firmemente creo el inefable  
misterio de la Beatísima Trinidad Padre, hijo y Espiritu Santo, tres  
personas distintas y un solo Dios verdadero, en el admirable sacra-

(Stamp.)

(Notarial Seal.)

mento de la Eucarestia la sagrada virginidad de  
la Emperatriz de los cielos, y en todos los demas  
misterios y sacramentos que tiene, cre y confieza  
la Santa Yglesia Catolica, apostolica Romana, y  
son contenidos en el credo y articulos, con los siete sacramentos  
instituidos por mi Redentor Jesucristo Salvador del mundo, á cuya  
comunión pertenesco, é invocando como invoco en mi socorro á la  
madre de Dios, al Santo Angel de mi guarda, Santos de nombre, y los  
de mi devoción con toda la corte celestial; hago, formo, y ordeno con  
su asistencia mi disposicion testamentaria en la forma siguiente

143 Primeramente, mando y encomiendo mi alma á Dios Nuestro  
Señor que la nada lo crió, y el cuerpo ó la tierra de que fué

formado, el cual cuando sea hecho cadaver se amortajara con el  
abito de la vestidura que corresponde á mi estado, y se sepultara  
en la parroquia de mi cargo en el lugar prescrito para estos casos,  
observandose en el particular lamayor humildad posible, que estimo  
conducente en la salud de esta vida transitoria para la eterna que  
espero gozar por la sangre del cordero immaculado Jesucristo.—  
Segunda. Ytem mando, por ser mi voluntad la cantidad de cien  
pesos, que serán distribuidos por disposicion de mis albaceas en  
sufragios al bein de mi alma, y para los otros gastos de funeral y  
entierro sin pompa alguna, y lo declaro para que conste.—Tercera.  
Ytem declaro: que en cumplimiento de la ley, y para satisfacer la  
piedad cristiana, pagarán mis albaceas de los intereses de mi pro-  
piedad por una vez, un peso á cada una de las mandas forzosas  
establecidas para los testadores.—Cuarta. Ytem mando que de los  
bienes que corresponden á mi dominio, sea separada la suma de  
quinientos pesos, los cuales mis albaceas con observancia de toda  
justicia y equidad, distribuyan entre los pobres de mi curato  
verdaderamente necesitados, contándose en estos las viudas  
menesterosas de buena vida, y las doncellas y huérfanas

144 que lo demanden, segun las circunstancias en que se hallen  
á mayor honra y gloria de Dios; y lo declaro para que  
conste.—Quinta. Ytem declaro que en los cuadernos de cuentas  
particulares de mi casa, se hallan las de mis sirvientes de que ellos  
tienen constancia en sus vales respectivos, y en donde aparece lo  
que justamente me adeudan por suministros que les tengo hechos;  
pero es mi voluntad perdonales como les perdono á cada uno

franca y libremente la mitad de dechos creditos sean los que fuesen en atencion á que me han acompañado con su servicio, é igualmente por ser personas pobres para que se alivien á lo menos con dicho

(Stamp.) descargo y para bien de mi alma.—Sesta. Ytem declaro: por bienes mios que reconosco como

(Notarial Seal.) castrenses en la Frontera la cuarta parte que me corresponde de los terrenos de la Hacienda

de San Pedro y Cienega de Heredia: la mitad del rancho del Babocomari; y alguna parte de los terrenos del Agua prieta y Adenaibacachi (Tesocomachi) por haber contribuido en su registro y adquisicion de propiedad en compañía de mis hermanos Don Rafael y Don Ygnacio Elias, en cuyos terrenos tengo igualmento derecho de propiedad á los semovientes que se hallen con mi marca y señal, y á la sesta parte de lo orejano; y lo declaro asi para la debida constancia.—Setima. Ytem declaro: que los terrenos y semovientes de que trata la cláusula anterior, es mi voluntad espontanea, á mayor honra

145 y gloria de Dios, se apliquen para fondos del Colegio de Santo Tomas de Sonora, en la Ciudad de Culiacan, para su mayor progreso y que dicho Colegio animado del celo de Jesucristo promueva la promulgacion del evangelio en estas fronteras para la conquista de los infieles al rebaño del divino pastor; y lo hago aqui constar para su cumplimiento, advirtiendo que si el citado colegio ú otro de su mismo iustituto se fundare dentro de este departamento de Sonora, á él debiera pertenecer el fondo referido.—Octava. Ytem declaro igualmente por bienes castrenses de mi propiedad los ranchos del "Carriso," y el "Tucaro" al oriente de esta ciudad, con los sitios que se contienen en los titulos respectibos que me dan su dominio, y los bienes semovientes de todas especies que en ellos existen, distinguidos con mi marca y señal, y tambien lo orejano que me corresponda.—Novena. Asimismo declaro ser de mi propiedad una labor de pan llevar y su galera respectiva, que está en la otra banda del rio, en el poso de la nieve, rumbo al Oriente, bajo los linderos de sus cercas, y amas otras agregadas del Macuchi, y la que cultiva Felipe Verdugo, siendo advertencia que aunque tengo la posesion de otra que es la que beneficia Santos Cruz, no es de mi propiedad, pues solo sufre el gravámen que resa la escritura que está en mi poder, y lo declaro para que conste.—Decima.

146 Ytem declaro igualmente por de mi propiedad la casa que está frente á la que habito, con la que forma calle, y en donde está un tendajon, compuesta de cinco piezas, patio y corral pequeño.

La de la plaza contigua á la de mi hermano

(Stamp.) Don José Maria Elias con el numero de otras

(Notarial Seal.) cinco piezas y el patio que le corresponde. Asi mismo la otra casa hubicada en la calle de la

Señora Morales y contigua ala de habitacion de la espresada con el total de diez piezas, patio y corral que igualmente tiene; y ademas tengo otras casas pequenas que conocen mis albaceas y lo hago constar para la debida constancia.—Decima primera. Ytem declaro: que la casa que actualmente es de mi habitacion, asi como la Huerta que ha sido reconocida por mia, plantada de varios

arboles frutales y aquella de algunas piezas de que se compone, pertenecen en propiedad á mis hermanos Da. Eulalia y Doña Petra Elias, de mutuo consentimiento de los hermanos barones, á quienes de mancomun correspondian en union de aquellas y lo declaro para que conste.—Decima segunda. Ytem declaro: que no tengo deudas pasivas ningunas; pero que las activas que se me deben por varios sugetos, las dejo nominadas y señaladas en minuta y lista firmada de mi puño, y en pliego cerrado bajo el titulo de su contenido, al cual se arreglarán mis albaces para recoger su importe.—Decima tercera. Ytem declaro: que á mi hermana Doña Eulalia, por el

carino que le tengo y los servicios que me ha hecho  
 147 tantos años personalmente, es mi voluntad mejorarla en el tercio y quinto de mis bienes libres, con mas el total de los enseres y menaje de casa que se hallen de puertas adentro de aquella; y lo declaro para que conste.—Decima cuarta. Ytem declaro: que á mi sobrina Dona Maria Elias, que siempre ha vivido en casa con mi hermana referida en la clausula anterior, le lego la cantidad de tres cientos pesos, que cuidarán mis albaceas perciba en dinero, ó en los articulos que á ella le agraden, y lo espreso aqui para que conste;—encargando igualmente á mis hermanas ya citadas, no desamparen á mi referida sobrina, en lo que pendiere de su arbitrio.—Decima quinta. Ytem declaro: que está á mi cargo por la curia Eclesiastica de esta Diócesis la huerta conocida en esta ciudad por de mi Señora de Guadalupe, y que está ubicada al otro lado del Baimpa, rumbo al Norte, la cual tiene actualmente en arriendo de cincuenta pesos anuales el ciudadano Remedios Estrada, y solo ha abonado la suma de veinte y cinco pesos, restando lo demas desde el dia de su arriendo, como asi consta en el cuaderno de esta cuenta, la que mis albaceas reconocerán recogiendo el importe

(Stamp)

(Notarial Seal.)

total que restase dicho arrendatario, y dando cuenta al Ilustre Señor Obispo, para que disponga de dicha finca lo que estime por conveniente.—Décima sexta. Ytem declaro: que en

asunto á las varias cantidades que se recoletaron para el  
 148 Santuario de la misma Senora Nuestra Madre Santisima de Guadalupe de Buenavista, y sobre los arriendos de la ante citada huerta, hay otro cuaderno de cargo y data en mi poder, de cuya existencia se deben facilitar por orden del Diosesano quinientos pesos para los objetos que dejo ya dispuestos en el espediente formalizado á este intento, por lo que será entregada de mi cuenta la referida cantidad de quinientos pesos, y se me acreditará su importe en el enunciado cuaderno de cargo y data; y lo declaro para que conste.—Decima septima. Ytem declaro: que instituyo por mis únicos y universales herederos del liquido total de mis bienes verificadas las bajas á que haya lugar, á los ya referidos mis hermanos Don. José Maria Doña Eulalia y Doña Petra Elias, únicos que sobreviven, y que como las segundas son mujeres y no puedan entender en muchas cosas fuera de la casa, encargo al primero la administracion de la labor de pan llevar que cita la cláusula novena de esta disposicion, á fin de que cosechados los frutos que diere y pagados los costos de estos, entregue á las hermanas la parte que les



corresponda, y lo mismo le encargo respectivamente practique con los semovientes que á ellas les corresponda de los ranchos que trata la otra cláusula octava de la propia disposicion.—

Décima octava. Ytem declaro: que es mi voluntad que  
149 los susodichos mis herederos que instituye la cláusula anterior, verificadas que sean las mandas forzosas, las pias, mejoras

y legados establecidos en el cumplimiento de esta disposicion; hallan, tengan y disfruten con la bendicion de Dios y la mia, por partes iguales, la Hacienda que les dejo de la manera propuesta; y para sus efectos lo declaro así para la debida constancia.—Décima novena. Ytem declaro: que recomiendo muy mucho á mis referidos hermanos no permitan ni entablen pleito alguno por causade los intereses que les dejo, sino que al contrario obrando como siempre en la estrecha union en que todos hemos vivido, transijan y concluyan entre si fraternalmente cualquiera duda, ó causa que ocurra con motivo de la presente mi última voluntad, por lo que el cielo

los colmara de la abundancia que les deseo, y en la otra vida cuando la Magestad divina sea ser-

Stamp.

(Notarial Seal.) vido llevarme á ella, obtenga mi alma el gozo de que mis intereses corpóreos no quitaron la

paz de mi familia.—Vigésima. Ytem declaro: que en la ciudad de Durango tengo el dominio de una capellania fincada con el capital de cuatro mil pesos y la obligacion de veinte misas anuales, cuya fundacion despues de mi individuo pertenece en derecho al que de mi familia siguiere la carrera eclesiástica, por cuya causa si el niño

José Domingo, hijo de mi hermano Don José Maria Elias,  
150 que está en dicha ciudad á curzar estudios, siguiere dicha carrera, á él pasará en su caso la referida fundacion.—

Vigesima primera. Y para cumplir y ejecutar todo lo determinado en la presente disposicion testamentaria que he otorgado, nombro por mis albaceas testamentarios, fidei—Comisarios y tenedores de mis bienes, con los demas sus anexos, en primer lugar á mi hermano Don José Maria, en segundo, á mi hermana Doña Eulalia, y en tercero á mi primo Don Ygnacio Elias á quienes insolidum ó de mancomun con arreglo á las leyes autorizo y faculto para la práctica de cuanto refiere lo determinado en la presente. Y para su cumplimiento les concedo el año legal, y el mas tiempo que fuere necesario, esperando sin embargo de esto, lo hagan y cumplan á la mayor brevedad posible. Y para que dichos mis albaceas lo ejecuten todo por si, sin intervencion de autoridad ninguna judicial ni otra que les interrumpa, sito en mi favor para este caso la Real Provision vigente de quince de Julio de mil setecientos setenta y nueve, y su concordante de treinta y uno de Agosto de mil setecientos ochenta y uno. Y por el presente revoco y anulo todas y cualesquiera otras disposicion testamentarias, codicilos y declaraciones que álinea de última voluntad antes de la presente hubiere otorgado, declarando como declaro, que solo la presente sea valida y subsistente en todas sus partes; y al efecto de su firmeza,

151 entero fé y crédito, la otorgo y firmo en esta ciudad de Arispe, capital del departamento de Senora, á los treinta dias del mes de Junio de mil ochocientos cuarenta y uno.

JUAN ELIAS GONZALES.



Antorizacion judicial  
en la cubierta del anterior  
testamento.

En la ciudad de Arispe capital del Departamento de Sonora á primero de Julio de mil ochocientos cuarenta y uno, yó el ciudadano Mariano Morales Alcalde primero por ministerio de la ley dije: que habiendo recibido aviso suplicatorio del Señor Cura Vicario foraneo de esta Capital B. Don Juan Elias Gonzales se pasase por mi y los de mi asistencia á su casa morada donde existe enfermo á lo que habiendome constituido como está mandado y á presencia de siete testigos, á saber ciudadanos Julian Bustamante, Placido Narbona, Santiago Garcia, Miguel Vasquez, Joaquin Corella, Felipe Perez, y Francisco Zarrategui, dijo: el citado Señor Cura Elias que en el presente pliego que me entregó cerrado en blanco se contenia su testamento y última voluntad con arreglo á las leyes, y como católico Apostólico Romano, que al efecto me pedia lo autorizase como único, valido y existente que queria se cumpliera, en cuya virtud dándole la feé judicial que haya lugar en derecho, y rubricando el reverso como corresponde, lo firmó con migo, los testigos susodichos y los de mi asistencia, segun derecho.

(Stamp.)

(Notarial Seal.)

MARIANO MORALES.  
JUAN ELIAS GONZALES.  
JULIAN BUSTAMANTE.  
PLACIDO NARBONA.  
SANTIAGO GARCIA.  
MIGUEL VASQUEZ.  
JOAQUIN CORELLA.  
FELIPE PEREZ.  
FRANCISCO ZARRATEGUI.

152

Asistencias:

JOAQUIN CORELLA.  
FELIPE PEREZ.

Siete rúbricas.—Sugunda clase.—Sello tercero.—Cincuenta centavos.—Para el bienio de mil ochocientos

segundo testamento otorgado en 2 de Febrero de 1869, que declara subsistente el anterior, con algunas aclaraciones.

*Codicilo.*

Juan Elias Gonzales vecito y cura párroco de esta ciudad; hallándome en mi entero y cabal juicio, segun Dios nuestro señor me lo ha dado, y sabiendo me ha de llamar ante sí cuando sea su santísima voluntad, declaro: 1º. que en treinta de Junio de mil ocho cientos cuarenta y uno, hice mi disposicion testamentaria, que se halla cerrada y con la autorizacion correspondiente, y cuya disposicion es mi voluntad tenga su cumplimiento.—(D.) 2º. Declaro que en mi dicha disposicion testamentaria nombré para mis herederos universales á mis hermanos Don José Maria, Doña Eulalia y Doña Petra Elias, para que se repartieran mis bienes por iguales partes; mas habiendo fallecido los

tres, dispongo ahora sean sustituidos. 3°. Que la parte de mi hermano Don José Maria le corresponda á sus hijos en igualdad de porciones.—4°. Que la de mi hermana Doña Eulalia, se reparta entre mis subrinos Ramon, Dolores, é Ygnacio Pesqueiras, hijos del Señor Don Ygnacio Pesqueira, en igualdad de partes.—5°. Que la parte de mi hermana Doña Petra se reparta entre los hijos de mi finando hermano Don Ygnacio Elias, 153 que son Doña Ramona, Doña Jesus, y la esposa del finado mi sobrino Don Florencio Elias.—6°. Que la hacienda de Tecoachi, y rancho de la Noria situado en jurisdiccion de Tecoripa, los he adquirido despues de mi disposicion testamentaria por compra legal.—7°. Que en la ya citada disposicion agraciaba á mi hermana Doña Eulalia con el tercio y quinto de mis bienes.—8°. Que del citado tercio y quinto se rebaje el (el) valor de la hacienda de Tecoachi, y que esta se entregue al antes dicho mi sobrino Don Ramon Pesqueira para que la disfrute.—9°. Que

(Stamp.)

(Notarial Seal.)

el sobrante del tercio y quinto se entregue á los hijos de mi sobrino Don Domingo Elias, para que por iguales partes se les reparta, y que todos mis herederos disfruten de la porcion que les lego con la bendiccion de Dios y la mia.—10°. Declaro: que en el citado rancho de la Noria tengo algunos bienes de campo que administra mi sobrino Don Manuel Elias por convenios que con migo ha tenido, cuyos documentos, asi como la deuda que tiene conmigo, se halla entre mis papeles; mis albaceas procederán al arreglo de uno y otro.—11°. Declaro: que en Guaymas en poder de Don Francisco Aguilar, tengo una cantidad de dinero á premios, cuyo documento debe existir entre mis papeles, y en caso de que no, está en poder de mi sobrino Don Manuel Elias, quien esta encargado de recojer la cantidad que se vence de premios, y aplicarla á los gastos que se 154 erogan en el rancho, y algunas cantidades que de ellos me ha remitido. Mis albaceas procederán al arreglo de cantidad y premios con mi citado sobrino Don Manuel Elias.—12°. Declaro: que mi hermana Doña Eulalia poseia intereses que estaban mancomunados con los mios, porque ambos trabajabamos en un cuerpo, sujetos á perdidas y ganancias, y por cuya causa no se hace mencion de ellos para separarlos en mi disposicion testamentaria.—13°. Declaro: que habiendo fallecido los albaceas que en mi disposicion nombre nombro para que lo sean y cumplan mi ultima voluntad, primero á Don Ygnacio Santos Elias, segundo, á Don Domingo Elias; y tercero, á Don José Maria Morales.—Y para que mis albaceas cumplan esta mi ultima voluntad, con total arreglo á las leyes vigentes; firmo este en Arispe á dos de Febrero de mil ochocientos sesenta y nueve.

JUAN ELIAS.

En la ciudad de Arispe á los dos dias del mes de Febrero de mil ochocientos sesenta y nueve, ante mi Car-

Autorizacion judicial los Preciado Juez de primera Ynstancia del Distrito, dije: que habiendo recibido aviso suplicatorio del Señor Cura y Vicario foraneo de esta ciudad Don Juan

Elias Gonzales, pásese por mi y los de mi asistencia á su casa donde existe enfermo, á las que habiendome constituido como está mandado, y á presencia de siete testigos, á saber, Ciudadanos Santiago Garcia, Antonio Barreda, Eduardo Bustamante, Mariano Morales, Rafael Barreda, José Maria Elias Morales, y Santiago Villaescusa, dijo; el citado Señor Cura Elias; que en el presente pliego que hase de codicilo cerrado

(Stamp.)

(Notarial Seal.)

en blanco, contenia igualmente su última voluntad con arreglo á las leyes, y como Católico Apostólico Romano, que al efecto me pedia lo autorizase como valido y subsistente, que queria se cumpliera; en cuya virtud dándole la fé judicial que hayo lugar en derecho, lo que firmó con migo y los de mi asistencia segun derecho.

CARLOS PRECIADO.

JUAN ELIAS GONZALES.

SANTIAGO GARCIA.

ANTONIO BARREDA.

EDUARDO BUSTAMANTE.

MARIANO MORALES.

RAFAEL BARREDA.

JOSÉ MARIA ELIAS MORALES.

SANTIAGO VILLAESCUSA.

Asistencias:

BRIJIDO REYES.

JOSÉ MARIA JUBERA.

Arispe, Abril cinco de mil ochocientos sesenta y nueve.—An la fecha yo Carlos Preciado Juez de primera

Auto declarando por legitima disposition testamentaria del finado señor cura Don Juan Elias Gonzales, los pliegos abiertos, el vandalos á instrumento publico y mandandolos protocolizar.

Ynstancia del Distrito, habiendo visto estos autos, dije: que reduzco á escritura publica, y declaro los dos pliegos de que se hace merito, por testamento y última voluntad del finado Señor Cura Vicario foraneo Don Juan Elias Gonzales, todo lo que en catorce fojas se contiene y rubriqué segun esta escrito: mando que se protocolice en el archivo de este propio Juzgado, y no estando en el papel sellado que corresponde, se traslade conforme á la ley y que de el y de estos autos se den á los interesados los copias y testimonios que pidieren; pues para la mayor subsistencia y validacion de todo interpongo mi autoridad en legal forma, y lo firmo por ante los testigos de asistencia de que doy fé.

CARLOS PRECIADO.

Asistencias:

BRIGIDO REYES.

FRANCISCO YRIGOYEN.

Sacóse del protocolo de instrumentos públicos de mi cargo, para entregar á los interesados: va fielmente corregido y concertado, en diez y siete fojas de papel comün, por absoluta falta del sello cor-

respondiente, el que ofrecen reponer los interesados dichos, sin cuyo requisito no (no) surtirá el presente sus efectos legales. Autorizado por ante los testigos de asistencia, en Arispe á cinco de Abril de mil ochocientos sesenta y nueve. Doy fé.—Entestimonio de verdad.

CARLOS PRECIADO.

Asistencia :

BRIGIDO REYES.

Asistencia :

FRANCISCO YRIGOYEN.

Tres rubricas.—E.—R.—mi—Vale—E—P—D—el—no—No valen  
—E.—R.—tres rubricas—Vale.

Concuerta bien y fielmente con la cópia original de primera saca, que me fué exhibida por el interesado, á quien se la devolvi en diez y siete fojas útiles, y de la cual se compulsó para la propia parte el presente testimonio : Vá este cotejado y corregido como corresponde por el infrascrito Notaria público de la Nacion, vecino de esta ciudad en estas doce fojas útiles, que llevan los timbres  
157 correspondientes cancelados conforme á la ley:

Mazatlan, Febrero veinte y dos de mil ocho cientos setenta y siete.

Doy fé.

[NOTARIAL SEAL.]

CIPRIANO PINA, N. P. N.

UNITED STATES CONSULATE,  
MAZATLAN, *February 24th, 1877.*

I, E. G. Kelton, consul of the U. S. A. for the port of Mazatlan and the dependencies thereof, do hereby certify that the above signature of Cipriano Pina, a national notary public, duly appointed for this port of Mazatlan, is his true and genuine signature, made and acknowledged in my presence, and do further certify that as such is entitled to full faith and credit.

In witness whereof I have hereunto set my hand (Consulate Seal.) and affixed the seal of the consulate the day and year first above written.

E. G. KELTON,  
*U. S. Consul.*

(Endorsed :) Exhibit D. Exhibit 3. Filed and recorded, at request of E. B. Perrin, October 8th, A. D. 1877, at 4 o'clock  
158 p. m., in Book of Miscellaneous Records, pages 485, 486, 487, 488, 489, '90, —, '92, '93, '94, '95, '96, '97, '98, '99, & 500.  
Sidney W. Carpenter, county recorder, Pima county.

(Endorsed :) Filed in the office of the clerk, court of private land claims, January 26, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

[Endorsed :] C 3½. F 6. Copy. Will of Juan Elias Gonzales. Filed Jan. 26, 1894. James H. Reeder, clerk, by R. L. Long, dep.

159

OFFICE OF SURVEYOR GENERAL,  
TUCSON, ARIZONA, *January 8th, 1894.*

I hereby certify that the paper attached hereto is a correct copy of what it purports to be a transcript of, on file in this office.

LEVI H. MANNING,  
*Un. S. Surveyor General, District of Arizona.*

160

EXHIBIT F 2.

Public office of citizen licentiate Cipriano Pina.

Certified copy of the nuncupative will of senor curate, Don Juan Elias Gonzales, deceased, authenticated by comparison, the present instrument, and sight of the original writing, which the interested parties presented, and which was returned to them on seventeen official leaves.

161

A seal inscribed: Chief administration of sealed paper of Sonora. Number 127. Second class. Seal first. For judicial proceedings. Provided for the biennium, 1868 and 1869. Value \$8.00. Chief administration of sealed paper in Sonora.

Hermosillo, October 8th, 1867. Pedro G. Tato. Jose E. Moreno. Two rubrics. Replaced.

Citizen, judge of first instance, we, Ygnacio Santos Elias and Jose Maria Elias Morales, appointed first and third testamentary executors (according as we are advised) by our deceased uncle, Don Juan Elias Gonzales, vicarial curate, a stranger in or non-resident of this city, for the execution of his last will, before your honor, as most conformable with law, appear and declare: that said senor, our uncle, having died Thursday night, the 25th of March last past, having made the two testamentary dispositions which we duly forward in closed sheet, we pray your honor, regarding them as presented, to open the same, and publish them with the due legal solemnity; and having raised them to the position of a public instrument, that the proper certificate be given us, in order that we may comply with our trust, as well as what the interested parties ask; as this which we ask is in fulfillment of justice—protesting not to be proceeding in bad faith, but for what is necessary, and to replace the corresponding sealed paper, which is not to be obtained in the office in this city.

Arispe, April 3d, 1869.

YGNACIO SANTOS ELIAS.  
JOSE MARIA ELIAS MORALES.

COURT OF FIRST INSTANCE OF THE DISTRICT, *April 3d, 1869.*

The two testamentary sheets, to which reference is made, having been duly presented, and the parties interested having presented the last certifications of their being solvent, or not indebted to the public treasury, it is ordered, that the justifica-

162

tion or proof with witnesses which is asked for, be made, and to that end, let them appear in this court, and, having accomplished the part of the matter which is necessary, let all be brought forward for decree. The judge of first instance of the district thus decreed, ordered, and signed, before the assisting witnesses, on this common, or unofficial paper, in consequence of there not being in the respective office the proper sealed paper, which for validation the interested parties will replace.

CARLOS PRECIADO.

Assisting witnesses:

BRÍGIDO REYES.

FRANCISCO YRIGOYEN.

At the same date, citizen Jose Maria Elias Gonzales was present, who, under solemn protest of law or oath to conduct himself with veracity, or tell the truth of what he knew, offered so to do, and it being in reference to the will and codicil presented, he declared it was certain, that the senor vicarial curate, Don Juan Elias Gonzales, had appeared to be in sound mind and furthermore in the presence of the present judge and other witnesses he declared that in those two closed sheets were contained his (the curate's) last testamentary will—he (witness) acknowledged his signature thereto, and that of the testator, who died on Thursday night, the 25th of the month last past—testified to seeing him dead. Declared his name to be, as it is expressed—that he was 33 years of age, married, a laborer, and a resident of this very city—all of which he affirmed and ratified, signing with me and those of my assistants, or the assisting witnesses.

PRECIADO.

JOSE MARIA ELIAS MORALES.

163      Assisting witness:

BRIGIDO REYES.

Assisting witness:

FRANCISCO YRIGOYEN.

Proceedings continued.—Citizen Antonio Bareda, being present, made solemn declaration under the law, to conduct himself with veracity, or state the truth as to what he might know in the matter, and on being questioned, offered to do so, and it being in reference to the said petition, and having been shown the will and codicil presented, he declared: it was true that the senor vicarial curate, Don Juan Elias Gonzales, appeared to be of sound mind, and in presence of the señor, the present judge, and the other witnesses, stated further, that in those two closed sheets, was contained his (the curate's) last testamentary will—that he acknowledged his signature and attested that of the testator, who died on the night of Thursday, the 25th of the past month, he, the witness, having seen him when dead. Said that his name was as above stated, his age to be 34 years, was a widower, collector of rents, and a resident



of this city—all of which he affirmed and ratified, subscribing with me and my assisting witnesses.

PRECIADO.  
ANTONIA BAREDA.

Assisting witness:  
BRÍGIDO REYES.  
Assisting witness:  
FRANCISCO YRIGOYEN.

At the same date, citizen Eduardo Bustamente, being present, duly solemnly protested under law to state the truth, as to what he knew in the matter, and being questioned about the said petition, and having been shown the will and codicil presented, he declared: That it was true that the senior vicarial curate, Don Juan Elias Gonzales, appeared of sound mind, and in presence of the  
164 present judge and other witnesses, moreover declared that in those two closed sheets are contained his (curate's) last testamentary will, acknowledged likewise his signature, and attested that of the testator, who died on the night of Thursday, the 25th of the last month, attesting to have seen him dead—said that his name was as above written, that he was thirty years of age, married, by vocation a laborer, and a resident of this said city, all of which he affirmed and ratified, signing with me and those of my assistants.

PRECIADO.  
EDUARDO BUSTAMENTE.

Assisting witnesses:  
BRÍGIDO REYES.  
FRANCISCO YRIGOYEN.

In continuation, citizen Santiago Villascusa, being present, who under protest of law to declare the truth as to what he might know, and being interrogated, offered to do so, and it being in reference to the said petition, and having had shown to him the will and codicil presented, he declared: That it was certain that the señor vicarial curate, Don Juan Elias Gonzales, had appeared to be of sound mind, and in the presence of the present judge, and other witnesses, moreover declared: That in those two closed sheets was contained the last testamentary will of the curate,—attested his own signature and that of the testator, who died on the night of the 25th, (Thursday) of the last month, attesting furthermore to having seen him dead: declared that his name was as above expressed, that he was 49 years of age, a married man, a laborer, a resident of this city, affirming and ratifying the foregoing, and subscribing with me and those of my assistants.

PRECIADO.  
SANTIAGO VILLAESCUSA.

Assisting witnesses:  
BRÍGIDO REYES.  
FRANCISCO YRIGOYEN.



165 Citizen Santiago Garcia, being present, who under protest of law, declared to state the truth as to what he knew, on being interrogated, offered so to do, and it being in the matter of the said petition, and the testament and codicil presented having been shown him, he declared: That it was true that the señor vicarial curate, Don Juan Elias Gonzales, had appeared in the enjoyment of his mental faculties, and in presence of the present judge, and the other witnesses, stated that in those two closed sheets his last testamentary will is contained, attesting moreover to his own signature, and to that of the testator, who died on the night of Thursday the 25th of the past month, testifying also to having seen him dead; also declaring that his name was as written, that he was 50 years of age, a bachelor, a laborer, and resident of this same city, all of which he affirms and ratifies, signing with me and my assistants.

PRECIADO.  
SANTIAGO GARCIA.

Assisting witnesses:

BRIGIDO REYES.  
FRANCISCO YRIGOYEN.

In the same date citizen Rafael Barreda, being present, under solemn declaration of law, to tell the truth touching what he might know and being interrogated, offered so to do, it being in the matter of the said petition—and the will and codicil presented having been exhibited to him: he declared that it was true that the señor, the vicarial curate, Don Juan Elias Gonzales, had appeared in full possession of his faculties, and witness moreover declared in presence of the present judge and the other witnesses, that within those  
166 two closed sheets, is contained his last testamentary will, and recognized his own signature and that of the testator, who died on the night of Thursday, the 25th of last month, attesting to the fact of seeing him dead: declared that his name was as above stated; that he was 29 years of age, that he was married, a general paymaster of the presidial companies, and a resident of this city, all of which was affirmed and ratified by him, he signing with me and those of my assistants.

PRECIADO.  
RAFAEL BARREDA.

Attesting witnessess:

BRIGIDO REYES.  
FRANCISCO YRIGOYEN.

ARISPE, April 5, 1869.

At this date and the antecedent proceedings having been finished, with exception of those of citizens Mariano Morales, Miguel Vasquez, Julian Bustamente, Francisco Zarrategui and Placido Narbona, in the parchment (caratula) testamentary granted July 1, 1841, some of them for being absent, and others having died, and it resulting likewise that the deceased senior curate, Don Juan Elias Gonzales, declared as valid and subsistent his will contained in the

said closed sheets, to all of which I certify before all the persons who are present, the said two sheets meanwhile appearing without the slightest suspicion of being torn, the will and codicil presented; on being opened by me, let publication be made in form and decrees be made for the rest petitioned for. I, Carlos Preciado, judge of first instance of the district, so decree, order, and sign, with the witnesses and assistants.

CARLOS PRECIADO.

Assisting witnesses:

BRIGIDO REYES.

FRANCISCO YRIGOYEN.

167 Immediately, the judge who subscribed in presence of the examined witnesses, opened the said testamentary sheets, the first containing six leaves and the second two, both with the third-class seal, giving them in conclusion the due publicity to their conclusion, which terminates thus: "Juan Elias Gonzales" and the literal tenor of the same is the following, to which I certify.

PRECIADO.

Assisting witnesses:

BRIGIDO REYES.

FRANCISCO YRIGOYEN.

Third-class seal, two reals, for the years 1840 and 1841.

In the name of Almighty God and of the ever Virgin Mary, our lady, amen.

I, the B. Juan Elias Gonzales, proper curate and foreign vicar of the parish of this city, and native of the same, legitimate son and of legitimate matrimony of Don Francisco Elias Gonzales, and of Doña Maria Dolores Romo de Vivar, now deceased, declare: That, finding myself unwell by decree of Providence, but in my sound state of mind, memory, and natural understanding, and believing as I firmly believe, the ineffable mystery of the most Blessed Trinity, Father, Son, and Holy Spirit, three persons distinct and only one true God, and in the admirable sacrament of the eucharist, and in the sacred virginity of the Empress of the Heavens, and in all the other mysteries and sacraments which the holy Catholic Church has believes, and confesses, and which are contained in the creed and articles with the seven sacraments instituted, by my Redeemer, Jesus Christ, the Savior of the world, to which communion I belong, and invoking, as I do invoke, to my aid the mother of God, the holy angel of my guardianship, saints of my name, and those of my devotion, with the entire celestial corps; I make, form, and order with their assistance my testamentary disposition in the following form: First,

168 I order and commend my soul to God, our Lord, who created it out of nothing, and my body to the earth of which it was formed, which, when it becomes a corpse will be shrouded with the habit which corresponds to my condition, and to be buried in the parish under my charge, in the place prescribed for these cases, observing in this particular the greatest possible humility,

which I esteem conducive to the health of this transitory life for the eternal existence which I hope to enjoy through the blood, of the Immaculate Lamb, Jesus Christ.—Second. I also order, it being my will, that the sum of \$100 shall be distributed by disposition of my executors in suffrages for the good of my soul, and for other funeral expenses and interment without any pomp, I so declare that the same may be in evidence.—Third, I also declare that in fulfillment of the law, and in order to satisfy Christian piety, my executors shall pay out of the interests of my estate for once, one dollar to each one of the obligatory legacies established for testators.—Fourth, I also order that of the estate which belongs to my possession shall be taken or separated the sum of \$500; which my executors, with observance of entire justice and equity, shall distribute among the poor of my curacy, really necessitated; considering as in this category the necessitated widows of good character and the maids and orphans who may ask for the same, according to the circumstances in which they find themselves to the greater honor and glory of God; and I declare this that it may appear in evidence.—Fifth, I also declare that in the private book accounts at my house are to be found those of my servants of which they have evidence, and where it appears that they are justly indebted to me for subministration which I have made them, which indebtedness I voluntarily cancel, frankly and freely, to the extent of one-half of said credits, let the same be what they may, in consideration that they have attended me and equally in consideration of their being poor people who would be alleviated by said discharge and as well for the good of my soul.—Sixth, I also declare as my realty property on the frontier, one-fourth part of which are lands of the Hacienda de San Pedro and the Cienega de Heredia, which one-fourth part are mine: the half of the ranch Babocomari; and some portion of the lands of Agua Prieta and Adeniabacachi (Tesocomachi) from my having contributed to their registry and acquisition in company with my brothers, Don Rafael and Don Ygnacio Elias, in which land I have an equal right of property to the semovientes or self-movable property, which are to be found with my mark and brand, and to the sixth part of the stock; and I declare the same that it may appear in evidence.—Seventh, I also declare that the land and self-movable property to which the anterior clause referred, it is my spontaneous will, to the greater honor and glory of God, should be applied for endowment funds for the College of Santo Tomas de Sonora, in the city of Culiacan, for its greater progress, and that said college, animated by the zeal of Jesus Christ, should promote the promulgation of ecangelism in these frontiers for the conquest of the infidels and bringing them into the divine fold; and I make it appear here for its fulfillment; adverting to the fact that if the said college or any other similar institution be founded within the department of Sonora, to it shall belong the said funds.—Eighth, I likewise declare as pertaining to my estate the ranches "Carriso" and "Tucaro," situate to the eastward of this city, with the sitios or leagues which

are mentioned in the respective titles which give me possession thereof, and the self-movable property of all kinds existing thereon, distinguished by my mark and brand, and the stock which may belong to me.—Ninth. Moreover, I declare to be my property the land cleared for cultivation, with the respective wagons, which is on the other bank of the river, en el poso de la nieve, in a direction to the east, within the boundaries of their respective fences, and besides others attached to the Macuchi, and that which Felipe Verdugo cultivates, taking notice that although I have possession of the other which is that which Santos Cruz cultivates, it is not my property, but only suffers the incumbrance indicated in the instrument which is in my power, and I make this declaration that it may appear in evidence.—Tenth, I also declare to be my property the house which is situate in front of that in which I live, with that which forms the street, and in which there is a grocery store composed of five rooms, a corral, and a court of small size. That of the contiguous plaza to that of my brother, Don Jose Maria Elias, with the number of five rooms and a corresponding court. Also the other house situated in the street of la Señora Morales and contiguous to the habitation of the aforesaid, with the total of ten rooms, court, and corral, which it likewise has; and, moreover, I have other small houses known to my executors, and I make the above appear for its due evidence.—Eleventh: I also declare that the house actually occupied by me, as well as the orchard which has been recognized as mine and planted with various fruit trees, and that of some rooms of which it is composed, belong in property to my (brothers) sisters, Eulalia and Petra Elias, with the mutual consent of the grown brothers, to whom it jointly belongs together with the others, and I so declare it for evidence.—

Twelfth: I also declare that I have no passive debts; but that the active ones which are owing me by various persons I leave mentioned and designated minutely and the list signed by me, and on a sheet enclosed under the title of its contents, to which my executors will dedicate themselves for the collection of the amounts.—Thirteenth: I also declare that to my sister Doña Eulalia, in consideration of the affection I cherish for her personally for so many years, it is my will to ameliorate her condition with the third and fifth of my free effects, with, moreover, all the contents and furniture of the house within the doors thereof; and I declare this that it may appear in evidence.—Fourteenth: I also declare that to my niece, Doña Maria Elias, who has always resided in the house with my said brother, in the anterior clause, I bequeath the sum of \$300, which my executors will have a care that she receives in money, or in such articles as may be agreeable to her, and I express this here in order that it may appear in evidence, charging equally my said sisters never to refuse shelter or protection to my said niece in whatever might depend upon their ability.—Fifteenth: I also declare that there is in my charge by the curacy ecclesiastic of this diocese the fruit garden known in this city as that of the Señora de Guadalupe, and that it is situate on the other side of the Baimpa, in a northerly direction, which is actually under rent in the sum of

\$50 a year to the citizen Remedios Estrada, and he has only advanced the sum of \$25, the balance remaining due since the day of its rental, as will appear in the books of this account which my executors will recognize, collecting the entire amount which may remain of said rental and accounting for the same to the most illustrious Señor Obispo, in order that he may make such distribution of said orchard as he may deem convenient.—Sixteenth:

I declare also that in the matter of the various sums which may be collected for the sanctuary of the said Señora Madre Santísima de Guadalupe de Buenavista, and in the matter of the rents of the before-mentioned orchard, there is another account book and other data in my possession, of the existence of which and out of which ought to be facilitated by order of the diocesan, \$500 for the purposes which I have already ordered in the proceeding formulating with this intent, on account of which there will be delivered on my account the sum of \$500 and the amount will be credited to me in the said book of accounts and data; and I declare this that it may appear in evidence.—Seventeenth: I also declare that I institute as my only and universal heirs to the liquid amount of my estate, verified; to the already mentioned my brothers Don Jose Maria, Doña Eulalia and Doña Petra Elias, the only ones who survive, and as the latter two are women and cannot understand or take charge of matters outside of the house, I enjoin upon the first the administration of the lands cleared for cultivation, which is mentioned in the ninth clause of this testamentary disposition, in order that the fruits harvested which it may provide and the expenses of these being paid, the part which would belong to them should be delivered to my sisters, and, in the same manner, I enjoin him respectively to proceed and act with reference to the movable or personal estate which may belong to them on the ranches of which the eighth clause of this testamentary disposition treats.—Eighteenth: I also declare that it is my will that the aforesaid my heirs, as instituted by the anterior clause, after execution or verification of the obligatory legacies, charities, and legacies established in the fulfillment of this disposition testamentary, may find, have, and enjoy, with the blessing of

God and my own, in equal parts the hacienda (estate) which I leave them in the manner indicated; and for its due effects, I make this declaration for its due evidence.—Nineteenth: I also declare that I very much recommend to my said brothers and sisters that they should not allow or institute any suit whatever in the matter of the interest which I leave them, but, on the contrary, acting ever in the strictest harmony like that in which we have all lived, they may transact and conclude and settle fraternally among themselves any and whatever doubt or difficulty which may result in consequence of the present instrument, my last will, for which Heaven will provide them with the abundance which I desire them, and in the other life, when the Divine Majesty may be pleased to carry me hither, my soul may enjoy the satisfaction of knowing that my temporal or corporeal interests did not break up the peace of my family.—Twentieth: I also declare that in the city of Durango I have possession

of a chaplaincy furnished with the capital of \$4,000, and the obligation of twenty annual masses, which establishment after me would belong of right to such one of my family as might follow the ecclesiastical career, on account of which, if the youth Jose Domingo, the son of my brother, Don Jose Maria Elias, who is in said city, pursuing a course of study, should follow said career, to him will pass in its turn the said establishment.—Twenty-first: And, in order to the accomplishment and execution of all determined in the present testamentary disposition which I have granted, I nominate as my testamentary executors, trustees, and possessors of my estate, with all pertaining thereto, in the first  
 174 place my brother, Don Jose Maria, in the second place my sister, Doña Eulalia, and in the third place, my cousin, Don Ygnacio Elias, to whom, jointly and severally, in conformity to the law, I authorize and give full faculty for the execution of whatever may refer to what is determined in the present instrument. And for its accomplishment, I concede or waive the legal year (ano legal), and the additional time which may be necessary, trusting nevertheless that they may do and perform the business with the greatest possible brevity. And in order that my said executors may execute all of the same by themselves, without the intervention of any judicial authority or any other which may interrupt them, I establish in my favor for this case the royal provision of the 15th of July, 1769, now in force, and its concordant provision of the 31st of August, of 1781. And by the present instrument I revoke and annul all and whatever other testamentary dispositions codicils, and declarations which as my last will before the present I may have granted, declaring, as I do declare, the present will to be the only valid and subsisting one in all its parts; and with a view to its firmness, entire faith, and credit, I grant it and sign it in this city of Arispe, capital of the department of Sonora, on the 30th day of the month of June, 1841.

#### JUAN ELIAS GONZALES.

In the city of Arispe, capital of the department of Sonora, on the 1st of July, 1841, I, the citizen, Mariano Morales, first alcalde by virtue of the law, declare: That having received a supplicatory notice from the señor cura vicario, stranger, of this capital B, Don Juan Elias Gonzales, that I and my assisting witnesses should proceed to his residence where he was sick to carry out  
 175 objects for which my office was constituted, and in presence of seven witnesses, to wit: citizens, Julian Bustamente, Placido Narbona, Santiago Garcia, Miguel Vasquez, Joaquin Corella, Felipe Perez and Francisco Zarrategui, he said: The said Señor Cura Elias, that in the present sheet, which he delivered to me sealed or clothed in blank, his testament and last will in conformity with law, was contained, and as a Roman apostolic Catholic, he asked me for an authorization in effect of the same as the only valid and existent will which he wished to be executed, to which purpose giving it the judicial faith which is required in law and placing the



respective rubrics, he signed it with me and the aforesaid witnesses, and those of my assistants, according to law.

MARIANO MORALES.  
JUAN ELIAS GONZALES.  
JULIAN BUSTAMENTE.  
PLACIDO NARBONA.  
SANTIAGO GARCIA.  
MIGUEL VASQUEZ.  
JOAQUIN CORELLA.  
FELIPE PEREZ.  
FRANCISCO ZARRATEGUI.

Assisting witnesses:

JOAQUIN CORELLA.  
FELIPE PEREZ.

Seven rubrics. Second class. Seal third. Fifty cents. For the biennium, 1868 and 1869. Chief administration of sealed paper of Sonora.

*Codicil.*

I, Juan Elias Gonzales, resident and parochial curate of this city, finding myself in sound mind and memory, according as God has given me, and knowing that he has to call me before him when it may be his most holy will so to do, I declare: First: That on the 30th of June, 1841, I made my testamentary disposition, which is to be found closed up and with the corresponding authorization, and which said disposition it is my will should have its due fulfillment (D). Second: I declare that in my said testamentary disposition I have nominated as my universal heirs my brothers

176 and sisters, Don Jose Maria, Doña Eulalia, and Doña Petra Elias, in order that they might divide among them in equal shares my estate; but the three having deceased, I order now that they may be substituted, or others put in their place.—Third: That the portion of my brother, Don Jose Maria, should correspond to or be given to his children in equal parts.—Fourth: That that of my sister Doña Eulalia, should be divided among or between nephews Ramon Dolores and Ygnacio Pesqueiras, children of Señor Don Ygnacio Perquiera, in equal parts.—Fifth: That the share of my sister Doña Petra should be divided between the children of my deceased brother, Don Ygnacio Elias, who are Doña Ramona, Doña Jesus and the wife of my deceased nephew, Don Florencio Elias.—Sixth: That the Hacienda de Tecochi and the Rancho de la Noria, situated in the jurisdiction of Tecoripa, have been acquired by me since the date of my testamentary disposition, by legal purchase.—Seventh: That in the already cited disposition, I favored my sister, Doña Eulalia, with the third and fifth of my estate.—Eighth: That of the said third and fifth the value of the Hacienda de Tecochi is de-



ducted, and that this may be delivered to the before-mentioned, my nephew, Don Ramon Pesquiera, in order that he may enjoy the same.—Ninth: That the surplus of the third and fifth be delivered to the children of my nephew, Don Domingo Elias, that they may divide the same among them, and that all the heirs may enjoy the part or portion which I bequeath them, with the blessing of God and my own.—Tenth: I declare that in the said Rancho de la Norta I have some country interests or property which my nephew, Don Manuel Elias, manages through agreements which exist between him and myself, which document or agreement, as well as the  
 177 debt which he has with me, are to be found among my papers; my executors will proceed to the adjustment of one and the other.—Eleventh. I declare that in Guaymas, in possession of Don Francisco Aguilar, I have a sum of money at interest, the document of which ought to be found among my papers, and in the event that it is not so found, it is in possession of my nephew, Don Manuel Elias, who is charged with the collection of the sum when the interest matures, and apply the same to the expenses which are occasioned on the ranch, and any sums which of the same have been remitted me. My executors will proceed to the settlement of the sum and the interest with my said nephew Don Manuel Elias.—Twelfth. I declare that my sister, Doña Eulalia, possesses interests which are jointly with mine, because we both work together, subject to profits and loss, and for which reason mention is not made of them with a view to segregate them in my testamentary deposition.—Thirteenth: I declare that the executors appointed in my will having died, I now nominate, in order that my will may be executed and fulfilled, first, Don Ygnacio Santos Elias, second, Don Domingo Elias, and third, Don Jose Maria Morales.—And in order that my executors may carry out this, my last will, with entire conformity to existing laws, I sign this in Arispe, February 2nd, 1869.

JUAN ELIAS —.

In the city of Arispe, on the 2nd day of the month of February, 1869, before me, Carlos Preciado, judge of first instance of the district, declared: That, having received a supplicatory notice from the señor cura y vicario, of this city, Don Juan Elias Gonzales, that I should, in company with my assisting witnesses, repair to his  
 178 house, where he was lying sick, for the purposes for which my office was established, and in presence of seven witnesses, to wit: Citizens Santiago Garcia, Antonio Barrera, Eduardo Bustamente, Mariano Morales, Rafael Barrada, Jose Maria Elias Morales, and Santiago Villaescusa, the said Señor Sura Elias declared: that the present sheet contained his codicil, enclosed in blank; it contained likewise his last will, in conformity with the laws, and as a Roman apostolic Catholic, and he besought me to authenticate the same as valid and subsisting, and which he wished to be carried out; in virtue of which, giving it the judicial faith,

which takes place in law, he signed it with me and those of my assistants, according to law.

CARLOS PRECIADO.  
JUAN ELIAS GONZALES.  
SANTIAGO GARCIA.  
ANTONIO BARREDA.  
EDUARDO BUSTAMANTE.  
MARIANO MORALES.  
RAFAEL BARREDA.  
JOSE MARIA ELIAS MORALES.  
SANTIAGO VILLAESCUSA.

Assisting witnesses:  
BRIGIDO REYES.  
JOSE MARIA JUBERA.

Arispe, April the 5th, 1869.—At this date I, Charles Preciado, judge of first instance of the district, having seen these proceedings, declared: That I reduced to public instrument and declared the two sheets which are treated of as the testament and last will of the said deceased, señor vicarial curate, Don Juan Elias Gonzales, the whole of it contained in fourteen pages and rubricked according as it is written. I order that the same be protocolized in the archives of this said tribunal, and there not being any sealed paper which corresponds in the place, that the same be transcribed conformable to law, and of it and of these acts copies and certificates which they may ask for may be supplied to the interested parties; as for greater subsistence and validity of all, I interpose my authority in  
179 legal form, and I subscribe the same before the witnesses of assistance, to which I certify.

CARLOS PRECIADO.

Assisting witnesses:  
BRIGIDO REYES.  
FRANCISCO YRIGOYEN.

Copied or drawn from the protocolate or registry office of public instruments under my charge, for the purpose of delivery to the interested parties, the same goes faithfully corrected and compared on seventeen leaves of common paper, from the absolute absence in this place of the corresponding sealed paper, which the interested parties offer to make good, without which requisite the present instrument will fail of its legal effect.

Authorized before the assisting witnesses in Arispe on the 5th of April, 1869.

I certify in testimony of the truth.

CARLOS PRECIADOS.

Assisting witnesses:  
BRIGIDO REYES.  
FRANCISCO YRIGOYEN.

Three rubrics.—E.—R.—mi—good—E.—P.—D.—el—no—not valid—E.—R.—three rubrics—valid.

Agrees well and faithfully with the original copy first drawn which was exhibited to me by the interested parties, to whom I have returned the same on seventeen official sheets or leaves, and the — which is duly authenticated for the said parties. The same compared and corrected by the undersigned, notary public of the nation, resident of this city, on twelve official leaves, which bear the corresponding stamp, duly canceled according to law.

Mazatlan, February 22, 1877.

I certify.

[NOTARIAL SEAL.]

CIPRIANO PINA, N. P. N.

180

UNITED STATES CONSULATE,  
MAZATLAN, *February 24th*, 1877.

I, E. G. Kelton, consul of the U. S. A. for the port of Mazatlan and the dependencies thereof, do hereby certify that the above signature of Cipriano Pina, a national notary public, duly appointed for this port of Mazatlan, is his true and genuine signature, made and acknowledged in my presence, and do further certify that as such is entitled to full faith and credit.

[CONSULATE SEAL.] In witness whereof I have hereunto set my hand and affixed the seal of the consulate the day and year first above written.

E. G. KELTON,  
*U. S. Consul.*

(Endorsed:) Exhibit D. Exhibit 3. Filed and recorded, at request of E. B. Perrin, October 8th, A. D. 1877, at 4 o'clock p. m., in Book of Miscellaneous Records, pages 485, 486, 487, 488, 489, '90-'92, '93, '94, '95, '96, '97, '98, '99, and 500. Sidney W. Carpenter, county recorder, Pima county.

(Endorsed:) Filed in the office of the clerk, court of private land claims, January 26, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

181

OFFICE OF SURVEYOR GENERAL,  
TUCSON, ARIZONA, *January 8th*, 1894.

I hereby certify that the paper attached hereto is a correct copy of the paper it purports to be a transcript of, on file in this office.

[Seal U. S. Surveyor General's Office, District of Arizona.]

LEVI H. MANNING,  
*U. S. Surveyor General, District of Arizona.*

182

## PLAINTIFF'S EX. "G."

Oficio público del ciudadano licenciado Cipriano Piña.

*Will of Josefa Coronado.*

Testimonio de escritura de testamento abierto ó nuncupatibo que otorgó en la villa de Rayon Estado de Sonora la finada Doña Josefa Coronado, de cuya disposicion se compulso testimonio por conuuerdo por exhibicion del original de primera saco que ha presentado el interesado en tres fojas útiles, y al cual se le devuelve.

183 Un sello que dice: Estado libre de Sonora.—Sello tercero.—  
Dos reales—Para los años de mil ochocientos treinta y cinco y mil ochocientos treinta y seis.

Señor Juez de paz:

Florencio Elias Gonzales parece ante V. y dice; que teniendo el cargo de primer albacea testamentario de mi finada madre, Doña Josefa Coronado, ocurro á V. supplicándole que para los efectos que me con vengan se sirva mandar que á continuacion de este pedido se me dé testimonio integro de la disposicion testamentaria de la repetida mi madre, formada el veinte y seis de Abril de mil ochocientos treinta y seis.—Por tanto y ser asi de justicia—A. V. pido se sirva proverlo, asegurando que en ello recibiré gracia y justicia.

Rayon, Septiembre veinte y seis de mil ochocientos treinta y seis.  
FLORENCIO ELIAS. [UNA RUBRICA.]

Juzgado de paz de Rayon, Septiembre veinte y seis, de mil ochocientos treinta y seis.

Auto mandando se compulse la copia.  
Por presentado, y siendo efectivo que la finada Doña Josefa Coronado dejó de primer albacea al Señor Don Florencio Elias, su hijo, librese á este el testimonio que pide, archivandose el testamento original.

JOSÉ NICOLAS ROBLES,

*Juez de Paz.*

Así lo decreté, mandé, y fermé con testigos de asistencia segun derecho.

Doy fé.

JOSÉ NICOLAS ROBLES,

*(Juez de Paz.)*

De asistencia:

JESUS GONZALES.

De asistencia:

MANUEL FUSTEL. [TRES RUBRICAS.]

*Testamento.*

En el nombre de Dios todo poderoso : Yó Maria Joséfa Coronado vecina de esta villa de Rayon, natural del presidio del Altar hija lejitima y de lejitimo matrimonio de Don Manuel Coronado, y de Doña Francisca Arvino, ya difuntos; hallándome gravemente adoleciendo de enfermedades que Dios nuestro Señor ha sido servido enviarme, pero en mi entero juicio y cabales sentidos y potencias,—Creyendo como fielmente creo en todos los articulos y

Disposicion testamentaria a que se refiere la diligencia anterior.

misterios de nuestra santa fé católica, Apostólica Romana que profeso como fiel cristiana, dentro de los cuales protesto que deseo vivir y morir, poniendo como pongo en mi trance amargo de la muerte que me espera, por medianeros é interseores ante mi Dios y redentor

Jesucristo, que me redimió con su preciosicima sangre, pasion y muerte de cruz, á la reina de los angeles Maria Santisima de los Dolores, madre de los pecadores, santo angel de mi guarda, santo de mi nombre, y demas de mi devocion, para que su divina majestad tenga misericordia de mi alma, y la lleve á la bienaventuranza eterna; hago, ordeno, y dispongo mi testamento en la forma, y con las cláusulas siguientes.

Primera. Doy mi alma á Dios nuestro señor, y mi cuerpo mando á la tierra de que fué formado.—Segunda. Ordeno que mi cadáver sea sepultado en esta parroquia con entierro humilde, á disposicion de mis albaceas, amortajándose con el santo habito de

185 nuestro santísimo padre San Francisco.—Tercera. Mando se apliquen cien misas á beneficia de mi alma.—Cuarto. Mando se den tres pesos á las mandas forzosas y piadosas.—Quinta. Mando se repartan cien pesos en limosnas en esta villa á viudas pobres, y huérfanos desamparados para que me encomienden

(Stamp.)

(Notarial Seal.)

á Dios.—Sesta. Declaro que fuí casada en primeras nupcias con el finado Don Salvador Monreal de quien tuve tres hijos que fueron Francisco, Juana

y Jesus, de los cuales solo vive el último.—Septima. Declaro que fuí casada en segundas nupcias con el finado Don Ygnacio Elias Gonzales, de quien tuve siete hijos, que lo fueron, Francisco, Concepcion, Florencio, Dolores, José, Jesus, y Mariano; á cuyo matrimonio introduje diez lleguas, mas ó menos, que en certeza no me acuerdo su numero, y un garañon, un baúl con mi ropa de uso, cama de dormir, y cosa de doscientos pesos en dinero; y mi dicho esposo no introdujo mas bienes que su hombría de bien; aunque quedarón, nuestros mis padres, mas bienecitos que dibian haberme tocado de herencia los gastó mi hijo Jesus.—Octava. Declaro que á la fecha aun se haya pendiente la testamentaria y division de bienes de mi segundo esposo Don Ygnacio Elias, por lo que ordeno que concluida que sea por sus albaceas, cumplan los mios con mi presente disposicion, y conforme á lo dispuesto en aquel testamento, mando

186 pue de la parte que me corresponde se saque el tercio, y se reparta libre entre mis herederos Florencio, Maria y Jesus, y los hijos de mi finado hija Maria Concepcion, que son Mariano, Serapio y Maria del Refugio, haciendo estos uno por su madre, á

quienes es mi voluntad mejorar en esta parte con arreglo á nuestra leyes vigentes; y en el demas resto de los bienes é intereses que me pertenescan, instituyo por mis legitimos y universales herederos y sucesores, amis hijos que viven, Florencio, Maria, Jesus los menores de mi citada hija ya espresados, inclusivo el que señalo en la clausula sesta.—Novena. Mando se le den á la Rosalia mi criada dos vaquillas, y se le perdone todo lo que debe.—Decima. Yten á la Rosa que se le den seis vaquillas.—Decima primera. Yten A la Ramonsita mando que se le den veinte vaquillas.—Decima segunda. Mando que despues de sacado el tercio se paguen todas las mandas, y donaciones que dejo espresadas del demas cuerpo de mis bienes.—Decima tercera. Declaro que le debo á Don Juan Fuerte cincuenta vacas paridas, manzas, y cincuenta vaquillas; Y dicho Señor, me debe lo que sabe mi hijo Florencio segun su cuenta á que me remito.—Decima cuarta. Declaro que la casa habidacion de la Rosa que es de mi propiedad, se la he bendido á mi hijo

Florencio por la cantidad de cuatro cientos pesos, cuya  
187 suma no adeuda.—Decima quinta. Declaro que conforme lo demarcan nuestras leyes dispongan mis Albaceas la seguridad de la tutela de los menores espresados, hijos de mi hija Maria Concepcion.—Decima sesta. Dejo de mis bienes cien pesos para un frontal de la capilla de nuestro amo que se ha de hacer en esta parroquia.—Decima septima. Constan apuntados en un cuadernito las personas que me deben y cuyas cantidades cobrarán mis Albaceas.—Decima octava. Nombro por mis Albaceas, y ejecutores de este mi

(Stamp.)

(Notarial Seal.)

testamento en primer lugar á mi hijo Florencio, en segundo á mi hijo politico Don Juan José Serrano, y en tercero á Don Manuel Maria Grijalva, á quienes insolidum doy todo mi poder y facultad tan bastante cuanto en derecho sea nesecario, para que sin ninguna interbencion judicial entren despues de mi muerte; y conoscan sobre mis bienes; practiquen inventarios, y particion, y cumplan con los legados, mandas, y donaciones que dejo espresadas, hasta su total conclusion por el termino de la ley, y el que mas puedan nesecitar, les ampleo, y concedo, declarando que por el presente documento, reboco, anulo, y doy por invalidos, otros cualesquier testamento, testamentos, codicilo, ó codicilos, que aparezcan, para que solo este haga fé, asi en juicio como fuerza de el, y que se esté á todo lo que contiene, pues asi es mi voluntad, ultima, y postrimera voluntad, y disposicion que salve mi conciencia. Asi lo otorgo, siendo testigos rogados los Ciudadanos Joaquin Contreras, José Antonio Hugues, Juan de Dios Sinohui, Relles Contreras, y Juan José Contreras, todos de esta ve-

188 cindad, con quienes lo firmo á veinte, y seis de Abril de mil ochocientos treinta, y seis.

MARIA JOSEFA CORONADO.

JUAQUIN CONTRERAS.

JUAN DE DIOS SINOHUI.

JOSÉ ANTONIO HUGUES.

RELLES CONTRERAS.

JUAN JOSÉ CONTRERAS.

Concuerda con su original que queda agregado al protocolo de instrumentos publicos otorgados en este juzgado de paz del que se saco corrijio, y concertó, en estas tres fojas utiles segun constan de su sello: fueron testigos al concordar el espresado testimonio los dos testigos de mi asistencia con quienes lo autorizé, y firmé, hoy veinte, y seis de Setiembre de mil ochocientos treinta y seis.

Doy fé en testimonio de verdad.

JOSÉ ROBLES.

De asistencia:

JOSÉ PABLO KELLY.

De asistencia:

MANUEL FUSTEL. [TRES RUBRICAS.]

E—P—juez de paz—voluntad—No valen—E—debían—Vale.

Concuerda bien y fielmente con la cópea original de primera saco, que me fué exhibida por el interesado, á quien le fué devuelta en tres fojas útiles, de lo cual se compulsó para la propia parte el presente testimonio: vá este cotejado y corregido por el infrascrito notario público, vecino de esta ciudad, en estas tres fojas útiles de papel del tamaño comun, que llevan los timbres correspondientes cancelados conforme á la ley.

189 Mazatlan, Febrero veinte, y tres de mil ochocientos setenta y siete.

Doy fé.



[NOTARIAL SEAL.]

CIPRIANO PIÑA, N. P. N.

UNITED STATES CONSULATE,  
MAZATLAN, *February 24th, 1877.*

I, E. G. Kelton, consul of the U. S. A. for the port of Mazatlan and the dependencies thereof, do hereby certify that the above signature of Cipriano Pina, a national notary public, duly appointed for this port of Mazatlan, is his true and genuine signature, made and acknowledged in my presence, and further certify that as such is entitled to full faith and credit.

In witness whereof I have hereunto set my hand and affixed the seal of the consulate the day and year first above written.

[CONSULATE SEAL.]

E. G. KELTON,  
*U. S. Consul.*

(Endorsed:) Exhibit C. Exhibit "2." Filed and recorded, at request of E. B. Perrin, October 8th, A. D. 1877, at 4 o'clock p. m., in Book of Miscellaneous Records, pages 481, 482, 483, 484, & 485. Sidney W. Carpenter, county recorder, Pima county.



(Endorsed :) Filed January 26, 1894. James H. Reeder, clerk, by R. L. Long, dep.

[Endorsed :] Case No. 3½. F. No. 7. Will of Josefo Coronado. Filed Jan. 26, 1894.

190

OFFICE OF SURVEYOR GENERAL,  
TUCSON, ARIZONA, *January 8th*, 1894.

I hereby certify that the paper attached hereto is a correct copy of what it purports to be a transcript of, on file in this office.

LEVI H. MANNING,  
*U. S. Surveyor General, District of Arizona.*

191

PLAINTIFF'S EX. G 2.

Public office of citizen licentiate Cipriano Pina.

Certified copy of the open or nuncupated will which Doña Josefo Coronado, deceased, granted in the city of Rayon, State of Sonora, of which will or testamentary disposition it is an authentic copy, by comparison with the original first drawn, which the interested party has presented on three official sheets, and to whom the same is returned.

192 A seal inscribed : Free State of Sonora. Third class seal.  
Two reals. For the years 1835 and 1836.

Mr. justice of the peace :

Florencio Elias Gonzales appears before your honor and says: That, discharging the trust of first testamentary executrix of my deceased mother, Doña Josefo Coronado, I recur to your honor sup-  
plicating you that for the purposes which are necessary to me you will be pleased to order that, in continuation of this petition that a perfect certificate be issued to me of the testamentary disposition of the aforesaid, my mother, made the 26th of April, 1836. Therefore and in consequence of its being in accordance with justice, I pray your honor to be pleased to decree it, assuring you that by so doing I will receive both grace and justice.

Rayon, September 26, 1836.

FLORENCIO ELIAS. [A RUBRIC.]

Court of the justice of the peace in Rayon, September 26, 1836.

The above having been presented, and it being the fact that the deceased, Doña Josefo Coronado, left as first executor Senor Don Florencio Elias, his son, let there be delivered to the latter the certificate which he asks for, filing for record the original will.

JOSE NICOLAS ROBLES,  
*Justice of the Peace.*

So ordered, decreed, and signed with assisting witnesses according to law.

I certify.

JOSE NICOLAS ROBLES,

*Justice of the Peace.*

Assisting witnesses:

JESUS GONZALES.

MANUEL FUSTEL. [THREE RUBRICS.]

*Testament.*

In the name of Almighty God: I, Maria Josefo Coronado, a resident of this city of Rayon, a native of the presidio of Altar, the legitimate daughter of the legitimate marriage of Don  
193 Manuel Coronado and of Dona Francisco Arvino, now deceased—that encountering myself gravely suffering from infirmities, which God our Lord has seen fit to afflict me with, but in entire possession of my mind, feelings capacities—belonging as I do and faithfully believing as I do in all the articles and mysteries of our holy apostolic Roman Catholic faith, which I profess as a faithful Christian, in midst of which I protest that I desire to live and die, and placing as I place, in this bitter peril of death which I expect, the queen of the angels, the most holy Mary de los Dolores, mother of sinners, my holy guardian angel, saint of my name, and also of my devotion, as mediator and intercessor before my God and Redeemer, Jesus Christ, who redeemed me with his precious blood, passion and death on the cross, in order that His Divine Majesty may have mercy on my soul and bear it to eternal beatitude—I make, order, and dispose my testament or will in the form, and with the clauses following:

First. I give my soul to God, our Lord, and my body I consign to the earth, out of which it was formed.

Second. I order that my corpse be given sepulture in this parish in the most humble manner, at the disposition of my executors shrouding the same with the holy habit of our most holy father, San Francisco.

Third. I order that one hundred masses be applied for the benefit of my soul.

Fourth. I order that there be given three dollars to the Obligatory and Pius charity.

Fifth. I order that one hundred dollars be distributed in alms in this city to poor widows, and orphans unsheltered, in order that they may commend me to God.

194 Sixth. I declare that I was united in first nuptials with the late Don Salvador Monreal, of whom I had three children who were Francisco, Juana, and Jesus, of which the last is the only survivor.

Seventh. I declare that I was united in second marriage with the late Don Ygnacio Elias Gonzales, by whom I had seven children, who were Francisco, Concepcion, Florencio, Dolores, Jose, Jesus, and Mariano; at or into which marriage I introduced ten mares

more or less, I do not recollect the exact number, and a stallion, a trunk with wearing apparel, a bed in which to sleep, and some two hundred dollars in money; and my said husband did not introduce into the matrimonial union any other thing than his honor as a man; notwithstanding more effects remained to me from our parents which ought to have been obtained by me by inheritance, but which my son Jesus squandered.

Eighth. I declare that at the date now current there still is pending the estate and the division thereof — my second husband, Ygnacio Elias, in consequence of which I order that administration thereof having been concluded by its executors, my executors will comply with my present disposition of the same and conform to all provided in that testament—I order that out of the part which belongs to me there be drawn one-third, and that it be freely distributed between my heirs Florencio, Maria and Jesus, and the children of my late daughter, Maria Concepcion, who are named Mariano, Serapio and Maria del Refugio, the latter making one by their mother, whom I wish to better in their condition in this part in conformity to our existing laws; and of the rest of the estate and interest which may belong to me I institute as my legitimate and universal heirs and successors, my surviving children, Florencio, Maria, Jesus and the minor children of my said daughter already named inclusive of him indicated in the sixth clause.

Ninth. I order that there should be given to Rosalia, my servant, two heifers, and I cancel all debts that she may owe me.

Tenth. Also to Rosa I order to be given six heifers.

Eleventh. I order also that there be given to Ramonsita twenty heifers.

Twelfth. I order that after the third be drawn out, all the charities and donations which I have mentioned be paid out of the remaining body of my estate.

Thirteenth. I declare that I owe Don Juan Fuerte fifty milch cows and fifty heifers, and that said senior owes me the amount which is known to my son Florencio according to his account, to which I refer.

Fourteenth. I declare that the dwelling-house of la Rosa, which is my property, has been sold to my son Florencio for the sum of four hundred dollars, which sum he is not owing.

Fifteenth. I declare that as our laws order, that my executors shall dispose the security of the guardianship of the said minors, children of my daughter, Maria Concepcion.

Sixteenth. Of my estate I leave the sum of one hundred dollars for a frontal to the chapel of our Lord, which has to be made in this parish.

Seventeenth. There will appear in a small account book the names of the persons who owe me, which sums my executors will collect.

Eighteenth. I appoint as my executors testamentary of this my last will in the first instance my son Florencio; in the second instance my son-in-law Don Juan Jose Serano, and

in the third instance Don Manuel Maria Grijalva, to whom jointly I give all my power and all the authority which in law may be necessary, in order that without any judicial intervention they may enter upon my estate after my death, and take cognizance of my effects, make inventory, and partition, and carry out the bequests, charities and donations which I have already expressed, until total conclusion by the terms of the law, and the additional time which may be necessary I amplify to them and concede, declaring that by the present document I annul, revoke, and invalidate whatever other testament or testaments, codicil or codicils, that may appear, in order that only this may have effect and be entitled to faith, as well in justice as outside of it, and all which it contains be held firm, as such is my will, last and ultimate will and disposition, which saves my conscience. I thus grant, citizens Joaquin Contreras, Jose Antonio Hugues, Juan de Dios Sinohui, Relles Contreras, and Juan Jose Contreras, all of this vicinity, being invited witnesses with whom I sign this twenty-sixth day of April eighteen hundred and thirty-six.

MARIA JOSEFA CORONADO.

JOAQUIN CONTRERAS.

JUAN DE DIOS SINOHUI.

JOSE ANTONIO HUGUES.

RELLES CONTRERAS.

It (the preceding) agrees with its original, which is to be found attached to the protocol of public instruments granted in this justice's court, from which it is extracted corrected, and compared on these three official leaves, according as their seal gives evidence. The witnesses at the comparison of the certificate or certified copy, were the two witnesses of assistants with whom I authenticated and authorized the same this twenty-sixth day of September, eighteen hundred and thirty-six.

I attest in testimony of the truth.

JOSE ROBLES.

Assisting witnesses:

JOSE PABLO KELLY AND

MANUEL FUSTEL. [THREE RUBRICS.]

E—P—justice of the peace—will—not valid—E—and ought—valid.

It (the preceding) agrees well and faithfully with the original copy of first draft, which was exhibited to me by the interested party, to whom it was returned on three official leaves, which was duly authenticated by the present certification: issued duly compared and corrected by the undersigned notary public, resident of this city, on these three official leaves of paper of common size, which carry on them the corresponding canceled stamps, according to law.

Mazatlan, February 23, 1877.

I attest.

[NOTARIAL SEAL.]

CIPRIANO PINA, N. P. N.

UNITED STATES CONSULATE,  
MAZATLAN, *February 24th, 1877.*

I, E. G. Kelton, consul of the U. S. A. for the port of Mazatlan and the dependencies thereof, do hereby certify that the above signature of Cipriano Pina, a national notary public, duly appointed for this port of Mazatlan, is his true and genuine signature, made and acknowledged in my presence, and further certify that as such is entitled to full faith and credit.

198 In witness whereof I have hereunto set my hand and affixed the seal and *affixed the seal* of the consulate the day and year first above written.

[CONSULATE SEAL.]

E. G. KELTON,  
*U. S. Consul.*

(Endorsed :) Exhibit C. Exhibit "2." Filed and recorded, at request of E. B. Perrin, October 8th, A. D. 1877, at 4 o'clock p. m., in Book of Miscellaneous Records, pages 481, 482, 483, 484, & 485. Sidney W. Carpenter, county recorder, Pima county.

(Endorsed :) Filed in the office of the clerk, court of private land claims, January 26, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

199

OFFICE OF SURVEYOR GENERAL,  
TUCSON, ARIZONA, *January 8th, 1894.*

I hereby certify that the paper attached hereto is a correct copy of the paper it purports to be a transcript of, on file in this office.

[Seal U. S. Surveyor General's Office, District of Arizona.]

LEVI H. MANNING,  
*U. S. Surveyor General, District of Arizona.*

200

EXH. H 2.

A todos los hombres por estos presentes. Sabel :

Que, yo, Francisca Robles, viuda del finado Florencio Elias, de la vecindad de la Villa de Rayon, en el Estado de Sonora, Republica de Mexico, hé nombrado, y por estos presentes nombro, á Don Domingo Elias Gonzalez, vecino de la Ciudad de Guaymas, en el Estado de Sonora, Republica de Mexico, mi apoderado, verdadero y legal, para que él pueda, para mi, y en mi nombre y lugar, vender y disponer de un cierto Rancho ó terreno, situado en el Condado de Pima, Territorio de Arizona, en los Estados Unidos de la America del Norte, el cual Rancho ó terreno, se conoce por el nombre de San Ygnacio del Bavocomari, y contiene ocho sitios de ganado mayor, mas ó menos, y siendo el mismo terreno, que fue concedido por el Gobierno de Mexico á Ygnacio Elias, y Eulalia Elias; la cual concesion se halla registrada en los archivos del Condado de Pima, en las paginas numeradas de 33 á 42, del Libro titulado "Land Grants Old Record Book No. 3"—tambien los Ranchos de San Pedro y la Cienega de Heredia, situados en el Territorio de Arizona, ó el Estado de Sonora.—Dichas ventas ó disposiciones han

de ser en tales terminos y con tales condiciones, como él, mi apoderado juzgue conveniente, y él, mi dicho apoderado, por este, está autorizado para recibir todo el dinero que toca á mi, en virtud  
 201 de dichas ventas ó disposiciones, y para otorgar todas las escrituras de venta, ó otros instrumentos que juzgue necesarias en el asunto, y tambien, para representarme ante Cualquiera Gobernador, Juez ó Oficial, y ante cualquiera Tribunal de indicatura en cualquiera manera que él, mi dicho apoderado juzgue necesario, para poner en la persona ó personas ó cualesquiera de ellas, á quienes mi dicho apoderado pueda vender dichos terrenos, ó sus representantes todo el titulo y derecho, que ahora tengo en dichos terrenos, y tambien el derecho que yo pueda adquirir en lo futuro en dichos terrenos, ó en alguna parte del mismo.

Dando you concediendo á mi dicho apoderado, poder y autoridad amplia, para hacer todas las actas y cosas requisitas y necesarias en la materia completamente con el mismo efecto, como yo pudiera hacer, si estuviera presente personalmente, con poder de sustitucion, por esto ratificando y confirmando todo lo que mi dicho apoderado ó sus sustitutos pueda hacer legalmente, ó mandar hacer en virtud de estos presentes.

En testimonio de lo cual, he puesto á esta escritura, mi firma y sello, en la Villa de Rayon, á los diez y nueve dias del mes de Julio del año mil ochocientos setenta y siete.

FRANCISCA ROBLES DE ELIAS.

Su × cruz.

Firmado, sellado y entregado en presencia de.

R. C. HOPKINS,

*Como Testigo.*

202 STATE OF CALIFORNIA, }  
 City and County of San Francisco. }

On this sixteenth day of August, A. D. 1877, before me, E. H. Tharp, a commissioner of deeds for the Territory of Arizona in and for the city and county of San Francisco, duly commissioned and sworn, personally appeared R. C. Hopkins, personally known to me to be the same person whose name is subscribed to the within and foregoing instrument as a witness thereto, who, being by me duly sworn, deposes and says that he resides in San Francisco, Cala.; that he was present and saw Francesca Robles de Elias, personally known to him to be the same person described in, whose name is subscribed to, and who executed the within and foregoing instrument as the party thereto, sign, seal, and deliver the same, and that the said Francesca Robles de Elias executed the same freely and voluntarily and for the uses and purposes therein mentioned, and that he, the deponent, thereupon signed his name as a subscribing witness thereto.

[SEAL.] Witness my hand and official seal this 16th day of August, A. D. 1877.

E. H. THARP,

*Commissioner of Deeds for Arizona in California.*



(Endorsed:) Exhibit H. Power of attorney. Exhibit "16." Francisca Robles, widow, to Domingo Elias Gonzalez. Dated July 19, 1877. Filed and recorded, at request of E. B. Perrin, October 8th, A. D. 1877, at 4 o'clock p. m., in Book 1, Powers of Attorney, page- 89, 90, 91, & 92. Sidney W. Carpenter, county recorder, Pima county. Filed in the office of the clerk, court of private land claims, Jan. 26, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

[Endorsed:] Case No. 3½. F. 8. Power of att'y. Filed Jan. 26, 1894. James H. Reeder, clerk, by R. L. Long, dep.

204

Ex. "H" 2.

Know all men by these presents, that I, Francisca Robles, widow of Florencio Elias, deceased, of the town of Rayon, in the State of Sonora, Republic of Mexico, have appointed and by these presents do appoint, Mr. Domingo Elias Gonzalez, of the city of Guaymas, in the State of Senora, Republic of Mexico, my true and lawful attorney for me and in my name and stead, and for my use to sell and dispose of that certain rancho or tract of land, situate in the county of Pima, Territory of Arizona, United States of North America; which said rancho or tract of land, is known by the name San Ygnacio del Bavocomani, and comprises eight leagues of land for large cattle, more or less, and being the same tract of land which was granted by the government of Mexico to Ygnacio Elias and Eulalia Elias; the said grant being recorded in the recorder's office of Pima county, on pages numbered from 33 to 43, of book called "Land Grants Old Record Book No. 3." Also, the ranchos of San Pedro and la Cienega de Heredia, situate in the Territory of Arizona, or the State of Sonora. The sales or dispositions shall be made in such terms and under such conditions as he, my attorney, shall deem proper, and he, my said attorney, by these presents, is authorized to receive all moneys coming to me, by reason of such sales or dispositions so made, and to execute all deeds of conveyance or other written instruments which he may deem necessary in the premises; and also, to appear and represent me before any governor, judge or other officer, and before any judicial tribunal in any manner that he, my said attorney, shall deem necessary, and to give to any person or persons, to whom my said attorney may sell said lands, or to either of them or their representatives, all the  
 205 right and title which I now have in and to said lands, and also, the right which I may hereafter acquire in and to said lands, or to any portion thereof. Giving and granting unto my said attorney full power and authority to do and perform all things whatsoever requisite and necessary to be done in the premises, with the same force and effect as I might or could do if personally present, with full power of substitution, hereby *notifying* and confirming all that my said attorney or his substitute shall lawfully do, or cause to be done, by virtue of these presents.



In witness whereof, I have hereunto signed and sealed this written instrument in the town of Rayon, on the 19th day of July 1877.

FRANCISCA ROBLES <sup>her</sup> x DE ELIAS.  
mark.

Signed, sealed, and delivered in the presence of—

R. C. HOPKINS, *As a Witness.*

Here follows the affidavit of R. C. Hopkins, a witness to the execution of the original instrument, of which the foregoing is a translation.

(Endorsed :) Filed in the office of the clerk, court of private land claims, January 26, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

[Endorsed :) Case No. 3½. F. S. Exh. H. *Ex. H.* Power of att'y. Filed Jan. 26, 1894.

206

OFFICE OF SURVEYOR GENERAL,  
TUCSON, ARIZONA, *January 8th, 1894.*

I hereby certify that the paper attached hereto is a correct copy of the paper it purports to be a transcript of, on file in this office.

[Seal U. S. Surveyor General's Office, District of Arizona.]

LEVI H. MANNING,  
*U. S. Surveyor General, District of Arizona.*

207

Ex. I.

This indenture made the 23rd day of July A. D. eighteen hundred and seventy-seven, between Jose de Jesus Maria Uriarte, bishop of Sonora, Republic of Mexico, by Domingo Elias Gonzalez his attorney-in-fact, Doña Jesus Elias de Serrano, by Domingo Elias Gonzalez her attorney-in-fact; Don Juan Jose Serrano, by Domingo Elias Gonzalez his attorney-in-fact; Doña Francisca Robles, widow of Don Florencio Elias deceased, by Domingo Elias Gonzalez her attorney-in-fact, Mariano Monreal by Domingo Elias Gonzalez his attorney-in-fact, Jesus Monreal by Domingo Elias Gonzalez her attorney-in-fact, Soledad Monreal by Domingo Elias Gonzalez her attorney-in-fact, Carmen Monreal by Domingo Elias Gonzalez her attorney-in-fact, and Altagracia Monreal by Domingo Elias Gonzalez her attorney-in-fact, the parties of the first part, and Edward Burt Perrin of the city and county of San Francisco, State of California, the party of the second part, witnesseth, that the said parties of the first part for and in consideration of the sum of seven thousand five hundred dollars (\$7,500.00) in gold coin of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, and convey unto the said party of the second part, and to his heirs and assigns forever, all that certain grant, rancho and tract of land situated in Pima county, Territory of Arizona, United States of America, and known as the rancho "San Ignacio del Bavo-comori" containing eight sitios of land more or less, and being the same lands granted by the government of Mexico to Ignacio Elias and Eulalia Elias, mention of the same being found in the records

of said Pima county on pages 33 to 42 inclusive, of the book entitled "Land Grants, Old Records, Book No. 3." Together with all the rights which we or either of us may have now, or may hereafter acquire as heirs, legatees, vendees, assignees or otherwise in or to the said tract of land and grant under the said Ignacio Elias and Eula'ia Elias, or either of them. And the said parties of the first part hereby covenant and agree to and with the said party of the second part his heirs and assigns, that they have not made done committed, executed or suffered any act or acts, thing or things whatsoever, whereby or by means whereof, the said premises, or any part or parcel thereof, now are, or at any time hereafter may or shall be impeached, charged or encumbered, in any manner or way whatever.

Together with all and singular the tenements hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder, rents issues and profits thereof.

To have and to hold all and singular the said premises, together with the appurtenances unto the said party of the second part, his heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JOSE DE JESUS MARIA URIARTE, [SEAL.]

*Bishop of Sonora,*

By DOMINGO ELIAS GONZALEZ,

*His Attorney-in-Fact.*

JESUS ELIAS DE SERRANO, [SEAL.]

By DOMINGO ELIAS GONZALEZ,

*Her Attorney-in-Fact.*

JUAN JOSE SERRANO, [SEAL.]

By DOMINGO ELIAS GONZALEZ,

*His Attorney-in-Fact.*

FRANCISCA ROBLES, [SEAL.]

By DOMINGO ELIAS GONZALEZ,

*Her Attorney-in-Fact.*

MARIANO MONREAL, [SEAL.]

By DOMINGO ELIAS GONZALEZ,

*His Attorney-in-Fact.*

209 MA. JESUS MONREAL, [SEAL.]

By DOMINGO ELIAS GONZALEZ,

*Her Attorney-in-Fact.*

SOLEDAD MONREAL, [SEAL.]

By DOMINGO ELIAS GONZALEZ,

*Her Attorney-in-Fact.*

CARMEN MONREAL, [SEAL.]

By DOMINGO ELIAS GONZALEZ,

*Her Attorney-in-Fact.*

ALTAGRACIA MONREAL, [SEAL.]

By DOMINGO ELIAS GONZALEZ,

*Her Attorney-in-Fact.*

Signed, sealed and delivered in the presence of—

DANIEL TURNER.

CONSULATE OF THE UNITED STATES OF AMERICA  
AT GUAYMAS, MEXICO, *September eighth, 1877.*

On this eighth day of September, A. D. 1877, before me, A. Willard, consul of the United States of America at Guaymas, Mexico, appointed to reside therein, personally appeared Domingo Elias Gonzalez, personally known to me to be the same person described in and who executed by powers of attorney the foregoing instrument as the attorney-in-fact of Jose de Jesus Maria Uriarte, bishop of Sonora; Jesus Elias de Serrano, Juan Jose Serrano, Francisca Robles, Mariano Monreal, Jesus Monreal, Soledad Monreal, Carmen Monreal, and Altagracia Monreal, named in said instrument as the parties thereto and therein described as the parties executing the same by their said attorney-in-fact, and the said Domingo Elias Gonzalez acknowledged to me that he subscribed the names of Jose de Jesus Maria Uriarte, bishop of Sonora; Jesus Elias de Serrano, Juan Jose Serrano, Francisca Robles, Mariano Monreal, Jesus Monreal, Soledad Monreal, Carmen Monreal, and Altagracia Monreal thereto as principals and his own name as attorney-in-fact, and executed said deed freely and voluntarily as and for the act and deed of the said Jose de Jesus Maria Uriarte, bishop of Sonora; Jesus Elias de Serrano, Juan Jose Serrano, Francisca Robles, Mariana Monreal, Jesus Monreal, Soledad Monreal, Carmen Monreal, and Altagracia Monreal, and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed the official seal of the consulate of the United States, at Guaymas, Mexico, this eighth day of September, A. D. 1877.

A. WILLARD,

[SEAL.]

*Consul of the United States at Guaymas,  
Mexico, Appointed to Reside Therein.*

(Endorsed :) Exhibit K. Exhibit "18." Deed. Jose de Jesus Maria Uriarte, bishop of Sonora, and others to Edward Burt Perrin. Dated July 23rd, 1877. Filed and recorded, at request of E. B. Perrin, October 8th, A. D. 1877, at 4 o'clock p. m., in Book 4 of Deeds, pages 112, 113, 114, & 115. Sidney W. Carpenter, county recorder, Pima county. Filed in the office of the clerk, court of private land claims, Jan. 26, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

[Endorsed]: Case 3½. F. 9. Exh. I. Deed. Uriarte *et als* to E. B. Perrin. Filed Jan. 26, 1894. James H. Reeder, clerk, by R. L. Long, dep.

211

OFFICE OF SURVEYOR GENERAL,  
TUCSON, ARIZONA, *January 8th, 1894.*

I hereby certify that the paper attached hereto is a correct copy of the paper it purports to be a transcript of, on file in this office.

[Seal U. S. Surveyor General's Office, District of Arizona.]

LEVI H. MANNING,  
*U. S. Surveyor General, District of Arizona.*

212

Ex. J.

*Warranty Deed.*

This indenture, made the twenty-third day of June in the year one thousand eight hundred and eighty-one, between Edward B. Perrin, of the city of San Francisco, State of California, party of the first part, and Robert Perrin of the same place, party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of sixteen thousand dollars lawful money of the United States of America to him in hand paid by the said party of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey and confirm, unto the said party of the second part, and to his heirs and assigns forever, all that tract and body of land situate in Pima and Cochise counties in the Territory of Arizona, on Bava-comeri creek containing eight (8) leagues, more or less, and known as Bava-comeri grant said tract having been sold to the said party of the first part by G. H. Howard, McGary, Ainsa and others, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of said part- of the first part, of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns,

213 forever, and the said Edward B. Perrin, his heirs, the said premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against the said party of the first part, his heirs, and against all and every person whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

E. B. PERRIN. [SEAL.]

Sealed and delivered in the presence of—  
CHARLES EDGAR MILLS.

STATE OF NEW YORK, }  
City and County of New York, }<sup>ss</sup>:

Be it remembered that on this 23rd day of June, A. D. 1881, before me, Charles Edgar Mills, a commissioner of the Territory of Arizona in and for the State of New York residing in said city of New York, personally appeared Edward B. Perrin, personally known

to me to be the same person described in and who executed the foregoing instrument as party thereto, who acknowledged to me that he had executed the same freely and voluntarily for the uses and purposes therein mentioned, and that the same was his free and voluntary act and deed.

In witness whereof I have hereunto set my hand and affixed my official seal this 23rd day of June, A. D. 1881.

CHARLES EDGAR MILES, [SEAL.]  
*Commissioner for Arizona Territory in*  
*New York, 117 Broadway, New York.*

214 (Endorsement:) Exhibit 23. Edward B. Perrin to Robert Perrin. Deed. Dated —, 18—. Recorder's office, Tucson, Pima Co., A. T. Filed and recorded, at request of E. B. Perrine, June 30th, A. D. 1881, at 7 a. m., Book 10, Deeds R. E., pages 428 and 429. Charles R. Drake, county recorder. Recorder's office, Tombstone, Cochise county, A. T. Filed and recorded, at request of C. R. Drake, July 11th, A. D. 1881, at 9 a. m., Book 1, Deed R. E., pages 536 *et seq.* A. T. Jones, county recorder.

(Endorsed:) Filed in the office of the clerk, court of private land claims, Jan. 26, 1894. Jas H. Reeder, clerk, by R. L. Long, deputy.

[Endorsed:] Case 3½. F. 10. Exh. J. Deed. E. B. Perrin to Robert Perrin. Filed Jan. 26, 1894. James H. Reeder, clerk, by R. L. Long, dep.

215 DEPT'S' EX. K.

In the Probate Court of the County of Pima, Territory of Arizona.

In the Matter of the Estate of FRANK ELY, Deceased.

TERRITORY OF ARIZONA, }  
 County of Pima, } ss:

I, John S. Wood, probate judge of the county of Pima, Territory of Arizona, and *ex officio* clerk of the probate court of said county, do hereby certify that Santiago Ainsa was on the 23rd day of November, 1891, duly appointed by the said probate court of Pima county administrator, with will annexed, of the estate of Frank Ely, deceased; that he duly qualified as such, and that on said day letters of administration, with will annexed, were duly issued to him as administrator of said estate of Frank Ely, deceased, and that said letters have not been revoked, and that said Santiago Ainsa is now the duly acting and qualified administrator of said estate.

In witness whereof I have hereunto set my hand and the seal of said probate court this 18th day of February, A. D. 1892.

[SEAL.]

JOHN S. WOOD,  
*Judge and ex Officio Clerk.*

Filed in the office of the clerk, court of private land claims, Jan. 26, 1894.

JAS. H. REEDER, *Clerk,*  
 By R. L. LONG, *Deputy.*

In the United States Court of Private Land Claims.

PERRIN, Plaintiff,  
*vs.*  
 THE UNITED STATES *et al.*, Defendants. }

Copy of entry in book of Toma de Razon in office of the treasurer general of the State of Sonora, at Hermosillo, Sonora, Mexico.

"En el mismo dia se entrego tambien de gratis al ciudadano merced que con fecha 25 de Diciembre de 1832, se espidio a favor de dichos interesados de ocho sitios de tierras para cria de ganado mayor y caballada que comprende el puesto nombrado San Ygnacio del Babbacomari, sito en el jurisdiction de Santa Cruz.

MENDOZA."

Translation of above.

"On the same day there was delivered, also without charge to the citizen, title, under date of December 25, 1832, issued in favor of the said interested parties, of eight sitios of land for raising cattle and horses, which comprise the place named San Ygnacio del Babacomari, situated in the jurisdiction of the presidio of Santa Cruz.

MENDOZA."

(Endorsed :) Filed in the office of the clerk, court of private land claims, Jan. 26, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

[Endorsed :] No. 3½. Exhib. L. In the court of private land claims. F. 12. Perrin, plaintiff, *vs.* The United States *et al.*, defendants. Copy of entry and translation thereof in book of Toma de Razon, San Ignacio del Babacomari grant. Filed Jan. 26, 1894. S. M. Franklin, Rochester Ford, att'ys for Ainsa, adm'r, etc.

*Deraignment of Title of Santiago Ainsa, Administrator, etc., to San Ignacio del Babacomari Grant.*

I.

Said grant was made by the government of Mexico in 1832 to Ygnacio Elias and Eulalia Elias, his sister.

II.

That said Eulalia Elias died unmarried, leaving three brothers, to wit, Ygnacio, Juan, and Rafael Elias.

That said Juan Elias was a priest and died without issue.

That said Rafael Elias died, leaving three sons, Jose Maria, Manuel,

and Jose Juan; that the son Jose Juan died about 1864, leaving a widow and the following children: Plutarco, Rafael, Alejandro, Carlos, Manuel, Jesus, and Dolores.

Santiago Ainsa, *ad administrator*, etc., claims by mesne conveyances (which are on file in this court) all the interest of the said Jose Maria, Manuel Elias, and the said heirs of Jose Juan Elias.

That said Ygnacio Elias married Josefa Cornado. Both died, leaving the following children: Florencio, Jesus, and Concepcion; that said Jesus married Juan Jose Serrano; that said Concepcion married Mariano Varela; that said Concepcion and her husband are dead; that they left two children, Angel and Elena Varela.

Santiago Ainsa, *ad administrator*, etc., claims by mesne conveyances (which are on file in this court) from Jesus Serrano and Angel and Elena Varela.

### III.

#### *List of Deeds Filed.*

1. Deed from Manuel Elias, Jose Maria Elias, and Santiago Ainsa to S. M. Franklin, dated Dec. 24, 1886.

2. Deed from S. M. Franklin to Robert C. Ely, dated January 3, 1887.

218 3. Deed from Rafael, Carlos, and Manuel Elias to Robert C. Ely, dated Feb. 3, 1887.

4. Deed from Plutarco, Alejandro, and Dolores Elias to Frank Ely, dated Feb. 8, 1887.

5. Deed from Jesus Elias de Maytorona and her husband to Robert C. Ely, dated Feb. 8, 1887.

6. Robert C. Ely and wife to Frank Ely, for himself and as trustee, dated July 30, 1887.

7. Deed from Angel Varela and Elena Varela to Harvey L. Christie, dated April 2, 1888.

8. Deed from Jesus E. de Serrano to Harvey L. Christie, dated April 23, 1888.

9. Deed from Harvey L. Christie and wife to Santiago Ainsa, trustee, dated January 24, 1893.

10. Appointment of Santiago Ainsa as administrator, with will annexed, of Frank Ely, deceased.

\_\_\_\_\_  
*Attorneys for Santiago Ainsa, Administrator and Trustee.*

(Endorsed :) Filed in the office of the clerk, court of private land claims, January 26, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

219

#### EXHIBIT N.

This indenture, made the 24th day of December, in the year of our Lord one thousand eight hundred and eighty-six—

Between Santiago Ainsa, of Pima county, Arizona Territory and Jose Ma. Elias and Manuel Elias, of the State of Sonora, Republic



of Mexico, parties of the first part and S. M. Franklin of said Pima county, Territory of Arizona, party of the second part witnesseth: That the said parties of the first part for and in consideration of the sum of six hundred  $\frac{00}{100}$  (\$600.00) dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the said party of the second part, and to his heirs and assigns forever, all their right, title and interest in and to all lands and real property, owned by them or either of them situate and being in the counties of Pima and Cochise, or in either of said counties, in the Territory of Arizona, United States of America, and all estates and interests therein.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders rents, issues and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

In witness whereof, the said parties of the first part, have hereunto set their hands and seals the day and year first above written.

SANTIAGO AINSA.	[SEAL.]
JOSE MA. ELIAS.	[SEAL.]
MANUEL ELIAS.	[SEAL.]

Signed, sealed and delivered in the presence of—  
E. F. ROGERS.

220 TERRITORY OF ARIZONA, }  
County of Cochise, } ss:

On this 24th day of December, 1886, personally appeared before me, Joseph S. Mills, justice of the peace, at Fairbank, Cochise county, in and for the said county of Cochise, Santiago Ainsa, Jose Ma. Elias, and Manuel Elias, known to me to be the persons described in and who executed the foregoing instrument, and who acknowledged to me that they and each of them executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

JOSEPH S. MILLS,  
*Justice of the Peace, Township No. 1, Cochise Co., A. T.*

(Endorsed :) Recorded, at the request of Wells-Fargo's Ex., dated December 27th, 1886, at 10 minutes past 11 o'clock a. m., in Book 9 of Deeds, page 148, records of the county of Cochise, A. T. A. F. Jones, county recorder, by W. F. Bradley, deputy recorder.

(Endorsed :) Territory of Arizona, county of Pima, ss: I herewith certify that the within instrument was filed and recorded, at the request of Jeffords and Franklin, 13th October, A. D. 1888, at 1.15 p. m., in Book 15, Deeds of Real Estate, at pages 266 & 267. Witness

my hand and official seal the day and year aforesaid. A. B. Sampson, county recorder. (Seal.)

Endorsed: Filed in the office of the clerk, court of private land claims, Jan. 26, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

221

## EXHIBIT O.

This indenture, made the third day of January in the year of our Lord one thousand eight hundred and eighty-seven—

Between S. M. Franklin of the city of Tucson, county of Pima, Territory of Arizona, party of the first part and Robert C. Ely, of Carrollton, Carroll county, State of Missouri, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one dollar (and other good and valuable considerations, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, and sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all his right, title and interest in and to all the lands and real property situate and being in the counties of Pima and Cochise, or in either of said counties, in the Territory of Arizona, and which were, on the 24th day of December, 1886, conveyed by deed of Santiago Ainsa, Jose Ma. Elias and Manuel Elias, to said party of the first part, which said deed is of record in the office of the county recorder of Cochise county in Book 9 of Deeds page 148, and reference to which is hereby made.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders rents, issues and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

222 In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

S. M. FRANKLIN. [SEAL.]

Signed, sealed, and delivered in the presence of—

TERRITORY OF ARIZONA, } ss:  
County of Pima,

On this 26th day of February, in the year one thousand eight hundred and eighty-seven, before me, A. M. Franklin, a notary public in and for said county of Pima, personally appeared S. M. Franklin, personally known to me to be the same person described in and whose name is subscribed to the within instrument and who executed the same, and acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

A. M. FRANKLIN,

*Notary Public, Pima County, Arizona Territory.*

(Endorsed :) Territory of Arizona, county of Pima, ss: I hereby certify that the within instrument was filed and recorded, at the request of Jeffords and Franklin, 13 October, A. D. 1888, at 1.15 p. m., in: Book 14, Deeds of Real Estate, at pages 722 & 723. Witness my hand and official seal the day and year aforesaid. (Seal.) A. B. Sampson, county recorder.

(Endorsed :) Filed and recorded, at request of S. M. Franklin, March 1st, A. D. 1887, at 10.30 a. m., Book 8, Deeds of Real Estate, pages 571 & 572. W. F. Bradley, county recorder.

(Endorsed :) Filed in the office of the clerk, court of private land claims, Jan. 26, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

223

## EXHIBIT P.

This indenture, made the third day of February, in the year of our Lord one thousand eight hundred and eighty-seven, between Rafael Elias, Carlos Elias and Manuel Elias, of San Pedro, State of Sonora, Republic of Mexico, parties of the first part, and Robert C. Ely of Carrollton, Carroll county, State of Missouri, United States of America party of the second part, witnesseth: That the said parties of the first part for and in consideration of the sum of one thousand and seventy-one  $\frac{45}{100}$  (\$1,071.45) dollars lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain sell and convey unto the said party of the second part, and to his heirs and assigns forever all their right, title and interest in and to that portion of that certain private land claim and Mexican land grant, situate lying and being in the county of Cochise, Territory of Arizona, United States of America and known and called the rancho Raydenibacachi, Agua Prieta y Santa Barbara, being the same Mexican land grant heretofore and on the 28th day of December 1836, made and granted by the State of Sonora, Republic of Mexico to Juan, Rafael and Ygnacio Elias Gonzales, a copy of the expediente of which said grant is of record in the office of the county recorder of Pima county, Arizona Territory, in Book 1 of Deeds, pages 125 to 138, both pages inclusive, reference to which said record is hereby made for a more full and complete description; the land embraced within the boundaries of said grant are situated and being partly in the county of Cochise, Territory of Arizona, and partly in the State of Sonora, Republic of Mexico, and it is the true intent and meaning of this deed to convey only that portion of said lands embraced within said grant as are situate in the said Territory of Arizona.

224

Also all their right, title and interest in and to that certain private land claim and Mexican land grant, situate lying and being in the county of Cochise, Territory of Arizona, United

States of America, and known and called the Rancho San Rafael del Valle, being the same Mexican land grant heretofore and on the 25th of December, 1832, made and granted by the State of Sonora, Republic of Mexico to Rafael Elias Gonzales, a copy of the expediente of which said grant is of record in the office of the county recorder of Pima county, Territory of Arizona, in Book 1 of Deeds pages 116 to 124, both pages inclusive, reference to which said record is hereby made for a more full and complete description.

Also all their right title and interest in and to all lands and real property, owned by them or either of them, situate and being in the counties of Pima and Cochise, on in either of said counties, in the Territory of Arizona, United States of America and all estates and interest therein.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances, unto, the said party of the second part, and to his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

RAFAEL ELIAS. [SEAL.]  
CARLOS ELIAS. [SEAL.]  
MANUEL ELIAS. [SEAL.]

Signed, sealed and delivered in the presence of—

A. M. FRANKLIN.

225 TERRITORY OF ARIZONA, }  
County of Pima, } ss :

On this third day of February, 1887, personally appeared before me, A. M. Franklin, a notary public in and for the said county of Pima, Rafael Elias, Carlos Elias, and Manuel Elias, known to me to be the persons described in and who executed the foregoing instrument, and who acknowledged to me that they and each of them and all of them executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[SEAL.]

A. M. FRANKLIN,  
Notary Public, Pima County, Ariz.

(Endorsed :) Filed and recorded, at request of Wells, Fargo & Co., February 24th, A. D. 1887, at 3.30 p. m., Book 8, Deeds of Real Estate, pages 563, 564, & 565. W. F. Bradley, county recorder. Filed in the office of the clerk, court of private land claims, Jan. 26, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

This indenture, made the eighth day of February, in the year of our Lord one thousand eight hundred and eighty-seven, between Plutarco Elias, Alejandro Elias and Dolores Elias, of the city of Guaymas, State of Sonora Republic of Mexico parties of the first part, and Robert C. Ely of Carrollton, Carroll county, State of Missouri, United States of America party of the second part witnesseth, that the said parties of the first part, for and in consideration of the sum of one thousand and seventy-one  $4\frac{5}{8}\%$  (\$1,071.45) dollars lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, grant, bargain, sell and convey unto the said party of the second part, and to his heirs and assigns forever all their right, title and interest in and to that portion of that certain private land claim and Mexican land grant situate lying and being in the county of Cochise, Territory of Arizona, United States of America, and known and called the Rancho Nandenibacachi, Agua Prieta, y Santa Barbara, being the same Mexican land grant heretofore, and on the 28th day of December, 1836, made and granted by the State of Sonora, Republic of Mexico to Juan, Rafael and Ygnacio Elias Gonzales, a copy of the expediente of which said grant is of record in the office of the county recorder of Pima county, Arizona Territory, in Book 1 of Deeds, pages 125 to 138, both inclusive, reference to which said record is hereby made for a more full and complete description; that the lands embraced within the boundaries of said grant are situate and being partly in the county of Cochise, Territory of Arizona and partly in the said State of Sonora, Republic of Mexico, and it is the true intent and meaning of this deed to convey only that portion of said lands embraced within said grant as are situate and being in said Territory of Arizona.

227 Also, all their right, title and interest in and to that certain private land claim and Mexican land grant, situate, lying and being in the county of Cochise, Territory of Arizona, United States of America, and known and called the Rancho San Rafael del Valle, being the same Mexican land grant heretofore and on the 25th day of December, 1832, made and granted by the State of Sonora, Republic of Mexico, to Rafael Elias Gonzales, a copy of the expediente of which said grant is of record in the office of the county recorder of Pima county, Arizona Territory, in Book 1 of Deeds, pages 116 to 124, both pages inclusive, reference to which said record is hereby made for a more full and complete description.

Also all their right, title and interest in and to all land and real property, owned by them or either of them, situate and being in the counties of Pima and Cochise, or in either of said counties in the Territory of Arizona, United States of America, and all estates and interests therein.

Together with all and singular the tenements, hereditaments and

appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

DOLORES ELIAS. [SEAL.]  
P. ELIAS. [SEAL.]  
ALEJ. ELIAS. [SEAL.]

Signed, sealed, and delivered in the presence of—

M. G. ROMERO.

NIEVES E. AROSCO.

228 REPUBLIC OF MEXICO, }  
State of Sonora, City of Guaymas, }<sup>88</sup>:

On this eighth day of February, 1887, personally appeared before me, A. Willard, consul of the United States of America at Guaymas, State of Sonora, Republic of Mexico, Plutarco Elias, Alejandro Elias, and Dolores Elias, known to me to be the persons described in and who executed the foregoing instrument, and who acknowledged to me that they and each of them executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

A. WILLARD.  
[SEAL.] Consul of the U. S. of America at Guaymas,  
State of Sonora, Republic of Mexico.

(Endorsed :) Filed and recorded, at request of Wells, Fargo & Co., February 24th, A. D. 1887, at 3.30 p. m., Book 8, Deeds of Real Estate, pages 565, 566, 567, & 568. W. F. Bradley, county recorder.

(Endorsed :) Filed in the office of the clerk, court of private land claims, Jan. 26, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

229

# EXHIBIT R.

This indenture, made the eighth day of *Febrero* in the year of our Lord one thousand eight hundred and eighty-seven between Jesus Elias de Maytorena and Jose M. G. Maytorena, her husband, both of Guaymas, State of Sonora, Republic of Mexico, parties of the first part, and Robert C. Ely of Carrollton Carroll county, State of Missouri, United States of America, party of the second part, witnesseth: That the said parties of the first part for and in consideration of the sum of three hundred and fifty-seven  $\frac{15}{100}$  (\$357.15) dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell



and convey unto said party of the second part, and to his hers and assigns forever, all their right title and interest in and to that portion of that certain private land claim and Mexican land grant situate lying and being in the county of Cochise, Territory of Arizona, United States of America, and known and called the Rancho Neydenibacachi, Agua Prieta y Santa Babara, being the same Mexican land grant heretofore, and on the 28th day of December, 1836, made and granted by the State of Sonora, Republic of Mexico, to Juan, Rafael and Ygnacio Elias Gonzales, a copy of the expediente of which said grant is of record in the office of the county recorder of Pima county, Arizona Territory, in Book 1 of Deeds pages 125 to 138 both inclusive reference to which record is hereby made for a more full and complete description; that the lands embraced within the boundaries of said grant are situated and being partly in the county of Cochise, Territory of Arizona and partly in the said State of Sonora, Republic of Mexico, and it is the true intent and meaning of this deed to convey only that portion of said lands embraced within said grant as are situate and being in said Territory of Arizona.

230 Also, all their right, title and interest in and to that certain private land claim and Mexican land grant, situate, lying and being in the county of Cochise, Territory of Arizona, United States of America, and known and called the rancho San Rafael del Valle, being the same Mexican land grant heretofore and on the 25th day of December, 1832, made and granted by the State of Sonora, Republic of Mexico to Rafael Elias Gonzales, a copy of the expediente of which said grant is of record in the office of the county recorder of Pima county, Arizona Territory, in Book 1 of Deeds pages 116 to 124, both pages inclusive, reference to which said record is hereby made for a more full and complete description.

Also, all their right, title and interest in and to all lands and real property, owned by them or either of them, situate and being in the counties of Pima or Cochise or in either of said counties in the Territory of Arizona, United States of America and all estates and interests therein.

Together with all and singular the tenements, hereditaments and appurtenances thereunto, or in anywise appertaining, and the reversion and reversions, remainder and remainders rents, issues and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

In witness whereof, the said parties of the first part, have hereunto set their hands and seals the day and year first above written.

JESUS E. DE MAYTORENA. [SEAL.]  
J. M. G. MAYTORENA. [SEAL.]

Signed, sealed, and delivered in the presence of—

M. C. MORENO.

LEWIS E. AEASTE.



231

REPUBLIC OF MEXICO,  
*State of Sonora, City of Guaymas,* } <sup>88 :</sup>

On this eighth (8) day of February, A. D. one thousand eight hundred and eighty-seven, personally appeared before me, A. Willard, United States consul at Guaymas, Republic of Mexico, Jose M. Maytoreno and Jesus Elias de Maytorena, his wife, whose names are subscribed to the annexed instrument as parties thereto, personally known to me to be the same persons described to the annexed instrument as parties thereto, who, each of them, acknowledged to me that they, each of them, respectively, executed the same freely and voluntarily and for the uses and purposes therein mentioned, and the said Jesus Elias Maytorena, wife of the said Jose M. Maytorena, being personally known to me to be the person whose name is subscribed to the annex-instrument as a party thereto, was by me first made acquainted with the contents of the said instrument, and thereupon she acknowledged to me, on examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion or undue influence of her husband, and that she does not wish to retract the execution of the same.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office at Guaymas, the day and year in this certificate first above written.

A. WILLARD,

[SEAL.]

*United States Consul at Guaymas, Republic of Mexico.*

(Endorsed :) Filed and recorded, at request of Wells, Fargo & Co., February 24th, A. D. 1887, at 3.30 p. m., Book 8, Deeds of Real Estate, pages 568, 569, & 570. W. F. Bradley, county recorder.

Endorsed: Filed in the office of the clerk, court of private land claims, Jan. 26, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

232

## EXHIBIT S.

Know all men by these presents that Robert C. Ely and Clara Ely, his wife, of Carrollton, Carroll county, State of Missouri, party of the first part, for and in consideration of the sum of ten dollars, cash in hand to us this day paid by Frank Ely of the city of Saint Louis, State of Missouri, party of the second part, the receipt whereof is hereby acknowledged, and in consideration of the performance by the said party of the second part of certain conditions and trusts to be hereafter set forth and fully stated in a declaration of trust to be made and executed by the said party of the second part, have granted bargained, sold and conveyed and by these presents do grant, bargain, sell and convey unto the said party of the second part, an undivided five forty-eighths interest to himself and his heirs forever of all our right, title and interest of every nature, kind, character and description whatsoever either at law or in equity in and to all the following-described lands lying, being and situate in the counties of Pima and Cochise, or in either of said counties, Terri-

tory of Arizona, being all of the lands, estate, interests and property acquired by said parties of the first part by direct or mesne conveyances from Santiago Ainsa, Jose Ma. Elias, Manuel Elias, Jesus Elias de Maytorena and Jesus M. Maytorena, Plutarco Elias, Alexandro Elias, Dolores Elias, Rafael Elias, Carlos Elias and Manuel Elias in the year 1887.

And we also have granted, bargained, sold and conveyed and by these presents do hereby grant, bargain, sell and convey unto the said party of the second part all of the balance and residue of our right, title and interest in and to all of the above-described land, as trustee. The said party of the second part as trustee, is to bring and institute and prosecute to final judgment all necessary suits or

233 actions at law or in equity for the purpose of recovering all of the said land and property from any and all persons now in possession of said land and property or any part thereof, and to institute and prosecute to final judgment all necessary suits or actions at law or equity as may be required against each and every parson whomsoever who may claim or assert any right, title or interest of any nature or character whatsoever in or to any of the above-described lands or property (except the persons named as the cestui que trusts under that certain declaration of trust to be made and executed by the party of the second part, as trustee), and in the event that the said party of the second part, trustee, shall fail, neglect or refuse to make and execute the declaration of trust herein provided for, or shall fail or refuse or for any cause be unable to fully carry out and perform the conditions and provisions set forth in this deed and in the declaration of trust to be made and executed in connection with this deed, then Rochester Ford, of the city of St. Louis, and State of Missouri may be and is hereby fully authorized to designate in writing some other person to act as trustee in the premises; such other person when so appointed as trustee shall have all rights, power and authority hereby granted and conferred upon the party of the second part as trustee.

To have and to hold an undivided five forty-eighths interest in and to the above granted and conveyed premises, lands, and property unto the said party of the second part, his heirs and assigns forever, and to have and to hold the balance and residue of the above granted and conveyed premises, lands and property unto the said party of the second part as trustee, his successors or assigns forever.

Together with all and singular the improvements, appurtenances, and the hereditaments thereunto belonging or in anywise appertaining, upon the terms and conditions expressed in  
234 this *in this* instrument and for the purposes set forth in the declaration of trust herein provided for.

And the said Clara Ely, wife of the said Robert C. Ely, does hereby bar her right of dower to all of the lands, property and premises herein mentioned and described, and by these presents doth relinquish, release, remise and quitclaim unto and in favor of the said party of the second part, for himself and to him as trustee, all right, claim, title or interest by way of dower or otherwise, which

she, the said Clara Ely, may have in or to any of the above-described lands, property and premises.

In witness whereof the said parties of the first part have hereunto set their hands and seals this 30th day of July in the year of our Lord one thousand eight hundred and eighty-seven.

ROBT' C. ELY. [SEAL.]  
CLARA A. ELY. [SEAL.]

I hereby accept this trust.  
FRANK ELY, *Trustee*.

STATE OF MISSOURI, }  
County of Carroll, } ss:

On this 30th day of July, in the year one thousand eight hundred and eighty-seven, before me, Jas. F. Tull, a notary public in and for the said county of Carroll, personally appeared before me Robert C. Ely, personally known to me to be the person who is described in and whose name is subscribed to the 9th instrument and who executed the same, and acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

Also, at the same time and place, appeared before me Clara Ely, wife of said Robert C. Ely, known to me to be the person described in and whose name is subscribed to the within instrument, described as a married woman, and upon examination without the hearing of her husband I made her acquainted with the contents of the instrument, and thereupon she acknowledged to me that she executed the same freely and voluntarily and for the uses and purposes therein mentioned, without fear or compulsion or undue influence of her husband, and that she does not wish to retract such execution.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.  
[SEAL.] JAS. F. TULL.

My com. ex. Jan'y 17th, 1891.

235 (Endorsed :) Filed and recorded, at request of Wells-Fargo's express, October 25th, A. D. 1887, at 9 a. m., Book 10, Deeds of Real Estate, pages 64, 65, 66, & 67. W. F. Bradley, county recorder.

TERRITORY OF ARIZONA, }  
County of Pima, } ss:

I hereby certify that the within instrument was filed and recorded at the request of Jeffords and Franklin, 13th October, A. D. 1888, at 1.15 p. m., in Book 14, Deeds of Real Estate, at pages 723 to 726, incl.

Witness my hand and official seal the day and year aforesaid.

A. B. SAMPSON,  
County Recorder.

(Endorsed :) Filed in the office of the clerk, court of private land claims, January 26, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

236

## EXHIBIT T.

This indenture, made the second day of April, in the year of our Lord one thousand eight hundred and eighty-eight—

Between Angel H. Varela and Elena Varela, both of Magdalena, Sonora, Mexico, the parties of the first part, and Harvey L. Christie of the city of St. Louis, State of Missouri, United States of America the party of the second part, witnesseth: That the said parties of the first part for and in consideration of the sum of ten dollars, lawful money of the United States to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell and convey unto the said party of the second part, and to his heirs and assigns forever one undivided half ( $\frac{1}{2}$ ) of all their right, title and interest in and to *that* certain pieces or parcels of land situate in the county of Cochise, Territory of Arizona, United States of America, known as the Rancho "Nuestra Senora del Carmen" being the same lands which were granted by the State of Sonora and Republic of Mexico to Don Ygnacio Elias Gonzales on the 15th day of November, A. D. 1824, as appears by the title deeds on record in the office of the treasurer general of the State of Sonora.

Also, one undivided half ( $\frac{1}{2}$ ) interesy in and to all other lands and estates in lands which the parties of the first part have in the Territory of Arizona, U. S. of America.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold, all and singular, the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

237 In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

A. F. VARELA [SEAL.]  
ELENA VARELA. [SEAL.]

Signed, sealed, and delivered in the presence of—  
JUAN BOJORQUES.  
D. J. CUMMING.

TERRITORY OF ARIZONA, }  
County of Pima, } ss :

Before me, D. J. Cumming, a notary public in and for said county of Pima, on this day personally appeared Angel H. Varela and Elena Varela, known to me to be the same persons whose names are

subscribed to the annexed instrument, and acknowledged to me that they executed the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this 3 day of April, A. D. 1888.

[SEAL.]

D. J. CUMMING,  
*Notary Public.*

(Endorsed :) Filed and recorded, at request of Wells-Fargo Ex., February 1st, A. D. 1889, at 1 p. m, Book 10, Deeds of Real Estate, pages 331 & 332. (Seal.) W. F. Bradley, county recorder.

[Endorsed :] Filed in the office of the clerk, court of private land claims, Jan. 26, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

238

# EXHIBIT U.

This indenture, made the 23d day of April, in the year of our Lord one thousand eight hundred and eighty-eight between Jesus E. de Serrano, of Hermosillo, Sonora, Mexico, the party of the first part and Harvey L. Christie of the city of Saint Louis, State of Missouri, United States of America the party of the second part, witnesseth: That the said party of the first part for and in consideration of the sum of one dollar, lawful money of the United States of America, to her in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said party of the second part, and to his heirs and assigns forever, one undivided half ( $\frac{1}{2}$ ) of all her right, title and interest in and to that certain piece or parcel of land situated in the county of Cochise, Territory of Arizona, United States of America, known as the Rancho Nuestra Senora del Carmen, being the same lands which were granted by the State of Sonora and Republic of Mexico to Don Ygnacio Elías Gonzales, on the 15th day of November, A. D. 1824, as appears by the title deeds on record in the office of the treasurer general of the State of Sonora; also one undivided half ( $\frac{1}{2}$ ) interest in and to all other lands and estate in lands which the party of the first part has in the Territory of Arizona, United States of America.

Together with ail and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold, all and singular, the said premises, together with the appurtenances unto the said party of the second  
239 part, and to his heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set her hands and seal the day and year first above written.

JESUS E. DE SERRANO. [SEAL.]

Signed, sealed, and delivered in the presence of—

DOLORES SERRANO.

JESUS SERRANO.

REPUBLICA MEXICANA,  
*Estado de Sonora, Distrito de Hermosillo,* } <sup>ss</sup>:

Ante mi, Matias Moran, notario publico, en el distrito de Hermosillo, hoy dia vientesiete de Abril de 1888, comparacio la Sra. Jesus E. de Serrano, a quien conosco ser la misma persona, cuyo nombre esta suscrito al calce del antecedente documento, y me declaro que habia otorgado el mismo para los fines y por la consideracion que en el se expresa.

Dado bajo mi firma y sello official el dia 27 de Abril, 1888.

MATIAS MORAN.

E. P.  
 N.

[SEAL.]

(Stamped.)

(Endorsed:) Filed and recorded, at request of Wells-Fargo ex., February 1st, A. D. 1889, at 1 p. m., Book 10, Deeds of Real Estate, pages 331 & 332. W. F. Bradley, county recorder.

[Endorsed:] Filed in the office of the clerk, court of private land claims, January 26, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

240

EXHIBIT V.

This indenture, made this twenty-fourth day of January in the year of our Lord one thousand eight hundred and ninety-three between Harvey L. Christie and Addie L. Christie, his wife, both of the city of St. Louis, in the State of Missouri, the parties of the first part, and Santiago Ainsa, as trustee, of the city of Tucson, county of Pima, Territory of Arizona, the party of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of ten dollars, and other good and valuable consideration, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, convey and confirm unto the said party of the second part, as trustee, and to his heirs and assigns forever, all those certain lots and parcels of land situate, lying and being in the county of Cochise or in county of Pima, or in either or both said counties in the Territory of Arizona, and bounded and particularly described as follows to wit: all their right, title and interest in the Mexican land grant known and called the Rancho Naydenibacachia, Agua Prieta y Santa Barbara; a copy of the expediente or title to said grant being of record in the office of the county recorder of said Pima county, in Book 1 of Deeds, pages 125 to 138, both inclusive, reference to which said record is hereby made for a more full and complete description.

Also, all their right, title and interest in and to all the lands, estates and premises mentioned and described in those two certain deeds, one dated April 2, 1888, made and executed by Angel H. Varela and Elena Varela unto Harvey L. Christie; the other dated April 23, 1888, made and executed by Jesus E. de Serano unto said Harvey L. Christie, said deeds being of record in the office of the



241 county recorder of said Cochise county in Book 10 of Deeds of Real Estate, on pages 330, 331, 332, reference to which records is hereby made.

Together, with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold, all and singular the said premises together with the appurtenances, unto the said party of the second part, as trustee, his heirs and assigns forever, and the said Addie L. Christie, wife of Harvey L. Christie, hereby forever bar-her dower interest or estate in & to the above-mentioned lands & premises.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

HARVEY L. CHRISTIE. [SEAL.]  
ADDIE L. CHRISTIE. [SEAL.]

Signed, sealed and delivered in the presence of—  
— — —

STATE OF MISSOURI, }  
City of St. Louis, } ss.:

Before me, Isaac H. Orr, a notary public in and for said city of St. Louis, State of Missouri, on this day personally appeared Harvey L. Christie and Addie L. Christie, known to me to be the same persons whose names are subscribed to the annexed instrument, and severally acknowledged to me that they executed the same for the purposes and consideration therein expressed.

And the said Addie L. Christie, wife of the said Harvey L. Christie, having been examined by me privily and apart from her husband and having the same fully explained to her, she, the said Addie L. Christie, acknowledged such instrument to be her act and deed and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office this 28th day of January, A. D. 1893.

My commission expires January 30, 1894.

[SEAL.] ISAAC H. ORR,  
Notary Public, City St. Louis, State of Missouri.

(Endorsed:) Filed and recorded, at request of S. M. Franklin, February 6th, A. D. 1893, at 9 a. m., Book 11, Deeds of R. E., pages 610 & 611. A. Wentworth, county recorder.

Endorsed: Filed Jan. 26, 1894. James H. Reeder, clerk, by R. L. Long, dep.



242

## EXHIBIT W.

In the Probate Court of the County of Pima, Territory of Arizona,

In the Matter of the Estate of FRANK ELY, Deceased.

TERRITORY OF ARIZONA, }  
County of Pima, } ss :

I, John S. Wood, probate judge of the county of Pima, Territory of Arizona, and *ex officio* clerk of the probate court of said county, do hereby certify that Santiago Ainsa was on the 23rd day of November, 1891, duly appointed by the said probate court of Pima county administrator, with will annexed, of the estate of Frank Ely, deceased; that he duly qualified as such, and that on said day letters of administration, with will annexed, were duly issued to him as administrator of said estate of Frank Ely, deceased, and that said letters have not been revoked, and that said Santiago Ainsa is now the duly acting and qualified administrator of said estate.

In witness whereof I have hereunto set my hand and the seal of said probate court this 18th day of February, A. D. 1892.

[SEAL.]

JOHN S. WOOD,

*Judge and ex Officio Clerk.*

(Endorsed :) Filed in the office of the clerk, court of private land claims, January 26, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

243

## EXHIBIT X.

STATE OF SONORA, }  
Republic of Mexico, } ss :

*Elena Varela.*

Be it remembered that, pursuant to the commission hereto annexed and on the 15th day of October, 1892, at Hermosillo, in the State of Sonora, Republic of Mexico, before me, Sarafico T. Roble, a notary public in and for the State of Sonora, Republic of Mexico, duly appointed and commissioned to administer oaths, &c., personally appeared ELENA VARELA, the witness mentioned in the foregoing commission, who, being by me first duly sworn, did make answer to the interrogatories annexed to said commission as follows, the said interrogatories being first interpreted to her into the Spanish language by Jose V. Escalante, Jr., a competent interpreter, who was by me first duly sworn according to law :

Answer to the 1st interrogatory. My name is Elena Varela; age, 42 years. I reside at Hermosillo temporarily, but my permanent residence is at Magdalena. My occupation is a school teacher at Magdalena.

Answer to the 2nd interrogatory. The name of my father is Ma-

992  
riano Varela. The name of my mother is Concepcion Aros de Varela.

Answer to the third interrogatory. They are dead. My father died at Magdalena in the year 1851 or 1852. My mother died at Hermosillo in the year 1883. I know of my father's death because I have heard my mother say so, and I know of my mother's death because I saw her die.

Answer to the 4th interrogatory. They were married at Arispe in January of 1850, and I was born the same year. I know of  
244 it because I have heard my mother say so.

Answer to the 5th interrogatory. The only children my father and mother left surviving them were myself and my brother Angel Varela. I live at Magdalena and he resides at Guaymas, in this State of Sonora, Mexico. I am forty-two years of age and my brother is forty-one years old.

Answer to the 6th interrogatory. My grandfather was Joaquin Varela; my grandmother's name was Concepcion Elias de Varela. I knew personally my grandfather, Joaquin Varela, but I never knew my grandmother, but I knew her by what I have heard my grandfather, cousins, and aunts say.

Answer to the 7th interrogatory. They are both dead; they died a great many years ago, in this State of Sonora. I know of my own knowledge of my grandfather's death, and as to that of my grandmother I know it from the traditions in the family.

Answer to the 8th interrogatory. There were three children, to wit, my father, Mariano Varela; a son, Serapio, who died while a minor and without any issue of his body, and a daughter, Maria de Refugio, who died a minor and without any issue of her body. My father was the only child who died leaving issue. As I have already stated, my knowledge is based upon what I have heard my mother and other members of the family say on the subject.

Answer to the 9th interrogatory. They were married at Arispe to each other a great many years ago; I could not tell when. My knowledge is based on family tradition.

245 Answer to the 10th interrogatory. Her maiden name was Concepcion Elias.

Answer to the 11th interrogatory. Her father's name was Ygnacio Elias and her mother's Jose Coronado de Elias. I know this from hearing my mother, my grandfather, Joaquin Varela, and other members of the family talk and say.

Answer to the 12th interrogatory. It was the same Ygnacio Elias.

Answer to the 13th interrogatory. He is dead; I have heard my mother, grandfather, and other members of the family say so. He died a great many years ago.

Answer to the 14th interrogatory. He was married in his lifetime to Josefa Caronado, who is also dead. I don't know when she died, but it was a great many years ago. They were my great-grandparents. My knowledge comes from what I have heard my grandfather, my mother, and other members of our family say on the subject.

Answer to the 15th interrogatory. My said great-grandparents had three children, to wit, Florencio, a son, who died in the year 1845, without issue; he was married in his lifetime to one Francisca Robles, who is also dead. They had, 2dly, a daughter, Jesus Elias, who married Juan Jose Serano. These are both dead. Mrs. Jesus Elias de Serano died at Hermosillo in the year 1890; Juan Jose Robles died a great many years ago. They left the following children, issue of the marriage aforesaid: Ygnacio, Guadalupe, Ricardo, and Jose Jesus, men, and Dolores, Josefa, Maria, and Jesus, women. Each and all of them reside in Sonora, at this city of Hermosillo, and all are over twenty-one years of age. Jose Jesus died  
 246 unmarried and without leaving any issue of his body. The third child was Concepcion Elias, who married Joaquin Varela, being my grandmother, and about whom I have already testified.

Answer to the 16th interrogatory. He was my great-grandfather. The following is a list of all his descendants, in the form of a family tree:

Ygnacio Elias	married	Josefa Coronado.
Florencio	Jesus	Concepcion
died without issue.	married	married
	Juan Jose Serano,	to
	leaving issue.	Joaquin Varela.
Mariano Varela	Serapio	Maria del Refugio
married	died without issue.	died without issue.
Concepcion Aros.		
Angel Varela.		
Elena Varela.		

Answer to the 17th interrogatory. I was acquainted with Eulalia Elias, to whom the State of Sonora granted the ranch of San Ygnacio del Barbocomari, now in the Territory of Arizona. I met her often in Ures and Hermosillo, where she used to come sometimes to visit my mother, Aune Eulalia Elias having her home at Arispe.

Answer to the 18th interrogatory. She is dead. She died at Arispe, in the year 1866. Her death was reported to our family by letters and I have heard my cousins, Manuel and Jose Maria Elias, say they saw her die at Arispe in 1866.

Answer to the 19th interrogatory. She was related to me. She was the sister of my great-grandfather, Ygnacio Elias, and hence she was my great-grandaunt. I have heard my mother and  
 247 grandfather say so, and I heard also Eulalia Elias say she was a full sister of my great-grandfather, Ygnacio Elias.

Answer to the 20th interrogatory. She was. I have said that she was a full sister of Ygnacion Elias and I know it, because I have heard herself and other members of my family say so.

Answer to the 21st interrogatory. She was not and never had issue of her body. I have heard Eulalia Elias herself say so and so is the report in our family.

ELENA VARELA.

Subscribed and sworn to before me this 15th day of October, 1892.

SERAFICO T. ROBLES.

STATE OF SONORA, }  
*Republic of Mexico,* } ss:

I, Serafico T. Robles, a notary public of the State of Sonora, Republic of Mexico, do hereby certify that the foregoing answers of the witness, Elena Varela, were reduced to writing and were read over and corrected by the said witness, and that the same were signed and sworn to by said witness before me on the 15th day of October, 1892.

In witness whereof I have hereunto set my hand and official seal at Hermosillo, State of Sonora, Republic of Mexico, this 15th day of October, 1892.

[SEAL.]

SERAFICO T. ROBLES.

248 Territory of Arizona, United States of America, to any notary public of the State of Sonora, Republic of Mexico, or any minister, commissioner, or charge d'affairs of the United States resident in and accredited to the Republic of Mexico or any consul general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul, or consular agent of the United States resident in the Republic of Mexico, Greeting:

You or either of your are authorized and required to summons and cause to appear before you Angel Varela and Alena Varela, residents of Magdalena, in the State of Sonora, Republic of Mexico, forthwith, and to take the answers under oath of each of said witnesses to the interrogatories hereto annexed, propounded to each of said witnesses in a certain cause now pending — the district court of the first judicial district of the Territory of Arizona in and for the county of Pima, wherein Santiago Ainsa, administrator, with will annexed, of the estate of Frank Ely, deceased, and Santiago Ainsa, trustee, and Santiago Ainsa, administrator of the estate of Jose Juan Elias, deceased, are plaintiffs, and Robert Perrin, Angel Varela, Elena Varela, Jesus Elias de Serrano, Harvey L. Christie, and The New Mexico and Arizona Railroad Company, a corporation, are defendants, and, having reduced said answers of said witnesses to writing, you will cause each of said witnesses to swear to and to subscribe to his said answers before you, to which you will certify officially, and to return without delay this commission and interrogatories and the answers of the said witnesses thereto to the clerk of the first judicial district court of the Territory of Arizona in and for the county of Pima and addressed to said clerk, at Tucson, county of Pima, Arizona Territory, in the manner required by law.

Witness Hon. Richard E. Sloan, judge of the said first  
 249 judicial district court of the Territory of Arizona in and for the county of Pima, at Tucson, in the county of Pima, Territory of Arizona, this 21st day of September, 1892.

Attest my hand and seal of said district court the day and year last above written.

[SEAL.]

BREWSTER CAMERON, *Clerk.*

250 *Interrogatories to be Propounded to Each of the Witnesses, Angel Valera and Elena Vorela, on Behalf of the Plaintiff.*

1st interrogatory. State your name, age, residence, and occupation.

2nd interrogatories. What is the full name of your father and your mother?

3rd interrogatory. Are your father and mother living or dead? If either is dead, state when and where he or she died, and also state the source of your information.

4th interrogatory. When and where were your father and mother married to each other? and state the source of your information.

5th interrogatory. If you say that your father and mother are both dead, then state what children they left surviving them. Give the name, age, residence of each child, and if any such child has since died, then state when and where and *at* what such child died; also state whether or not such deceased child was married before his or her death; and, if so, what issue, if any, such deceased child left surviving him or her.

6th interrogatory. What was the name of your grandfather and grandmother on your father's side? and state the source of your information.

7th interrogatory. Are your said grandfather and grandmother on your father's side living or dead? If dead, state when and where they died and the source of your information.

251 8th interrogatory. If you say your said grandfather and grandmother on your father's side are both dead, then state what child or children were born to them; give the name of each of said child-; also state whether or not such child is living or dead. If any such child is dead, state when and where he or she died. State whether or not such deceased child was married in his or her lifetime; if so, to whom, and what issue, if any, of such marriage are now living, and if any are so living, give the name, age, and residence of each.

9th interrogatory. Do you know when and where your said grandfather and grandmother on your father's side were married to each other? If so, state and give the source of your information.

10th interrogatory. What was the maiden name of your grandmother on your father's side?

11th interrogatory. If, in answer to the last interrogatory, you say that the maiden name of your said grandmother was Concepcion Elias, then state the names of her father and mother and give the source of your information.

12th interrogatory. If, in answer to the 11th interrogatory, you say that the name of the father of your said grandmother was Ygnacio Elias, then state whether or not that Ygnacio Elias was the same Ygnacio Elias to whom Sthe tate of Sonora, Republic of

Mexico, in the year 1832 or thereabouts, granted or sold an interest in the lands, then situate in the State of Sonora but now situate in the Territory of Arizona, known and called the Rancho San Ygnacio del Barbocomari.

252 13th interrogatory. Do you know whether or not the Ygnacio Elias to whom was granted an interest in the said Rancho San Ygnacio del Barbocomari is living or dead? If dead, state when and where he died, and give the source of your information.

14th interrogatory. Were the said Ygnacio Elias married in his lifetime; if so, to whom and when? and give the source of your information. If you say that he was married, then state to whom he was married, and state whether or not his wife is dead, and give the source of your information.

15th interrogatory. If you say that said Ygnacio Elias was married, then state whether or not there was any issue of said marriage; if yea, state the names of all the children, issue of said marriage, and give the source of your information. If any such child is dead, state when and where he died; also state whether or not such deceased child was married in his or her lifetime; if so, when and to whom, and whether or not there were any issue of said marriage living at the time of the death of such child or now living, and the names, age, and residence of each.

16th interrogatory. Was the said Ygnacio Elias, to whom was sold or granted by the State of Sonora an interest in the said lands aforesaid, related to you in any way? If he was, state the relation, and give a detailed list of all his de-cendants and the children of such de-cendants, making a complete family tree, down to the present date.

253 17th interrogatory. Are you—were you ever acquainted with one Eulalia Elias, to whom the State of Sonora, Republic of Mexico, in the year 1832 or thereabouts, sold or granted an interest or estate in and to certain lands, then a part of the State of Sonora but now a part of the Territory of Arizona, United States of America, known and called the Rancho San Ygnacio del Barbocomari? If so, state when and where you knew her.

18th interrogatory. Do you know whether or not said Eulalia Elias is living or dead? If dead, state when and where she died, and also state the source of your information.

19th interrogatory. Was the said Eulalia Elias related to you in any way? If so, state — and give the source of your information.

20th interrogatory. Was the said Eulalia Elias related to the said Ygnacio Elias? If —, state the relationship and give the source of your information.

21st interrogatory. Was the said Eulalia Elias ever married? and give the source of your information on that subject.

SELIM M. FRANKLIN,

*Attorney for Plaintiff.*

Endorsed: Filed in the office of the clerk, court of private land claims, February 15, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

254

## EXHIBIT Y.

I, Victor Aguilar, treasurer general of the State of Sonora, Republic of Mexico—

Certify that the manual book of charges and entries corresponding to the year 1829 does not exist in these archives.

And at the request of the commissioner of the American Government, Mr. H. O. Flipper, I give the present certificate in the city of Hermosillo, on the 12th of the month of March, eighteen hundred and ninety-four.

V. AGUILAR.

Endorsed: Filed in the office of the clerk, court of private land claims, March 27, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

[Endorsed:] No. 34. Ex. "Y." Certificate of treasurer general of State of Sonora as to non-existence of book of charges and entries. Filed in the office of the clerk, court of private land claims, Mar. 27, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

255

(Certificate Appended to Boquillas Expediente.)

## EXHIBIT Z.

Sello cuarto.  
Una cuartilla.

Estado  
Libre de  
Sonora.

Para los años  
de 1833 y '834.

No. 762. Mediante q. los interesados en quienes fueron rematados en 18 de Abril y 24 de Diciembre de 1828 los terrenos de San Rafael del Valle, San Juan de las Boquillas y Nogales, y San Ygnacio del Bavocómari sitios en jurisdicción del Presidio de Santa Cruz, Ciudadano Rafael Elias por el primero de dichos terrenos; Capitan Ygnacio Elias Gonzales y Nepomuceno Felis por el segundo, Ygnacio y Eulalia Elias por el tercero, han acreditado su inculpa-bilidad en que no se les espidiesen los respectivos títulos de merced por la Tesoreria gral. del estado q. fué unido de cuya oficina los solicitaron desde antes del 10 de Julio de 1830, procederá V. S. á espedirles dichos títulos de gratis, de conformidad con lo dispuesto por el decreto num°. 27 de 11 de Agosto de 1831.

Dios y Libertad.

Arizpe, 29 de Abril de 1833.

YGNACIO DE BUSTAMANTE.  
LUCAS RODRIGUEZ, Oficial 1°.

Sor. Tesorero gral. del Estado.

Es copia.

Arizpe, 8 de Mayo de 1833.

JOSÉ MARIA MENDOZA. [RUBRIC.]



256 And be it further remembered that thereafter, to wit, on the 30th day of March, A. D. 1894, being the 13th day of the December term, 1893, of this court, held at Tucson, Arizona Territory, the court gave judgment as follows, to wit :

ROBERT PERRIN	}	No. 3½. Babocomari Grant.
vs.		
UNITED STATES <i>et als.</i>		

This cause having been submitted to and taken under advisement by the court on March 28, 1894, the court, after due deliberation, hereby orders, adjudges, and decrees that the claim of the plaintiff to the lands described in the petition of plaintiff on file herein is invalid and said claim is hereby rejected and the petition is dismissed.

(Record signed)

JOSEPH R. REED,  
*Chief Justice.*

And be it further remembered that thereafter, to wit, on the 17th day of September, 1894, a petition, an order, and a citation were filed with the clerk of said court; which petition, order, and citation are in the words and figures following, to wit :

257 The Court of Private Land Claims of the United States.

ROBERT PERRIN, Complainant,

vs.

THE UNITED STATES OF AMERICA, THE CRITTENDEN Land and Cattle Company, R. R. Richardson, Naber Pachico, David Choate, A. G. Carroll, Thomas Smith, C. L. Douglas, L. Craft, Santiago Ainsa, Administrator, with Will Annexed, of the Estate of Frank Ely, De- ceased; Santiago Ainsa, Trustee and Administrator of the Estate of Jose Juan Elias, Deceased; Angel Verela, Elena Verela, Jesus Elias de Serrano, A. Smith, B. Smith, C. Smith, and D. Smith, Respondents.	}	Petition.

*Petition for Order Allowing Appeal.*

Robert Perrin, the complainant in the above-entitled cause, conceiving himself aggrieved by the final decree made, entered, filed, and recorded in the above-entitled cause on or about the 30th day of March, 1894, does hereby appeal from said final decree to the honorable the United States Supreme Court under and according to the laws of the United States of America in that behalf made and provided, and prays that this his appeal may be allowed, and that a transcript of the record, testimony, exhibits, proceedings, and papers upon which said final decree was made, duly au-

258 thenticated, may be sent to the said Supreme Court of the United States, and also that an order be made fixing the amount of security which said complainant shall give and furnish upon such appeal, and that upon giving the said security all fur-

ther proceedings in this court and in said cause be suspended and stayed until determination of said appeal by said United States Supreme Court.

Dated Santa Fé, September 10th, 1894.

JOHN T. MORGAN,  
CRAIG & MEREDITH, AND  
BYRON WATERS,

*Solicitors for Complainant and Appellant, Robert Perrin.*

Endorsed: Filed in the office of the clerk, court of private land claims, Sept. 17, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

259 The Court of Private Land Claims of the United States.

ROBERT PERRIN, Complainant,

vs.

THE UNITED STATES OF AMERICA, THE CRITTENDEN LAND and Cattle Company, R. R. Richardson, Naber Pachico, David Choate, A. G. Carroll, Thomas Smith, C. L. Douglas, L. Craft, Santiago Ainsa, Administrator, with Will Annexed, of the Estate of Frank Ely, Deceased; Santiago Ainsa, Trustee and Administrator of the Estate of Jose Juan Elias, Deceased; Angel Verela, Elena Verela, Jesus Elias de Serrano, A. Smith, B. Smith, C. Smith, and D. Smith, Respondents.

Order.

On motion of John T. Morgan, Craig and Meredith, and Byron Waters, Esquires, solicitors for Robert Perrin, complainant in the above-entitled suit, it is ordered that the foregoing appeal be, and the same is hereby, allowed, and that a transcript of the record, testimony, exhibits, proceedings, and papers in the cause upon which the final decree entered herein was made, duly authenticated, be sent to the said Supreme Court of the United States. It is further ordered that the amount of security which said complainant and appellant shall give and furnish upon said appeal be, and the same is hereby, fixed at the sum of five hundred dollars, and upon the giving and furnishing of a proper bond, with good and sufficient surety, to be approved by this court, all further proceedings in this court and in said cause be suspended and stayed until the determination of said appeal by said Supreme Court of the United States.

260

Dated this 10th day of September, 1894.

JOSEPH R. REED,  
*Chief Justice.*

(Endorsed:) Filed in the office of the clerk, court of private land claims, September 17, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

## 261 The Court of Private Land Claims of the United States.

ROBERT PERRIN, Complainant,

vs.

THE UNITED STATES OF AMERICA, THE CRITTENDEN  
Land and Cattle Company, R. R. Richardson, Naber  
Pachico, David Choate, A. G. Carroll, Thomas Smith,  
C. L. Douglas, L. Craft, Santiago Ainsa, Administra-  
tor, with Will Annexed, of the Estate of Frank Ely,  
Deceased; Santiago Ainsa, Trustee and Administra-  
tor of the Estate of Jose Juan Elias, Deceased; Angel  
Verela, Elena Verela, Jesus Elias de Serrano, A.  
Smith, B. Smith, C. Smith, and D. Smith, Respond-  
ents.

Citation.

United States of America to the United States of America, The  
Crittenden Land and Cattle Company, R. R. Richardson, Naber  
Pachico, David Choate, A. G. Carroll, Thomas Smith, C. L. Dou-  
glas, L. Craft, Santiago Ainsa, administrator, with will annexed, of  
the estate of Frank Ely, deceased; Santiago Ainsa, trustee and  
administrator of the estate of Jose Juan Elias, deceased; Angel  
Verela, Elena Verela, Jesus Elias de Serrano, A. Smith, B. Smith,  
C. Smith, and D. Smith:

You are hereby notified that in the above-named cause in equity,  
wherein the above-named Robert Perrin is complainant and the  
above-named respondents are respondents, the said Robert Perrin  
has prayed an appeal to the Supreme Court of the United States  
from the decree in said cause entered, and that such appeal has  
been allowed.

Wherefore you are hereby cited and admonished to be and ap-  
pear at a session of the Supreme Court of the United States to be  
holden at Washington, commencing on the second Monday of Oc-  
tober next, to show cause, if any there be, why the decree appealed  
from should not be reversed and set aside and the relief be granted  
to said appellant as by him prayed and as to justice and equity  
may appertain.

262 Witness the Honorable Melville W. Fuller, Chief Justice  
of the Supreme Court of the United States, this 10th day of  
September, 1894.

JOSEPH R. REED, *Judge*.

[Seal Court of Private Land Claims, Santa Fé, New Mexico.]

Attest: JAMES H. REEDER, *Clerk*,By IRENEO L. CHARES, *D'p'ty*.

Received service of copy of the foregoing citation this 10th day  
of September, 1894.

MATT. G. REYNOLDS,

*U. S. Attorney for U. S. Court of Private Land Claims.*

(Endorsed:) Filed in the office of the clerk, court of private land  
claims, Sept'r 17, 1894. Jas. H. Reeder, clerk, by R. L. Long, deputy.

263 And be it further remembered that thereafter, to wit, on the 9th day of October, 1894, there was filed a bond; which bond is in the following words and figures, to wit:

*Bond.*

The Court of Private Land Claims of the United States.

ROBERT PERRIN, Complainant,

*vs.*

THE UNITED STATES OF AMERICA, THE CRITTENDEN LAND AND Cattle Company, R. R. Richardson, Naber Pachico, David Choate, A. G. Carroll, Thomas Smith, C. L. Douglas, L. Craft, Santiago Ainsa, Administrator, with Will Annexed, of the Estate of Frank Ely, Deceased; Santiago Ainsa, Trustee and Administrator of the Estate of Jose Juan Elias, Deceased; Angel Verela, Elena Verela, Jesus Elias de Serrano, A. Smith, B. Smith, C. Smith, and D. Smith, Respondents.

Know all men by these presents that we Robert Perrin, as principal, and E. B. Perrin and Mrs. Lilo Perrin, as sureties, are held and firmly bound unto the defendants, The United States of America, The Crittenden Land and Cattle Company, R. R. Richardson, Naber Pachico, David Choate, A. G. Carroll, Thomas Smith, C. L. Douglas, L. Craft, Santiago Ainsa, administrator, with will annexed, of the estate of Frank Ely, deceased; Santiago Ainsa, trustee and administrator of the estate of José Juan Elias, deceased; Angel Verela, Elena Verela, Jesus Elias de Serrano, A. Smith, B. Smith, C. Smith, and D. Smith, in the full and just sum of one thousand dollars, to be paid to the said defendants, The United States of America, The Crittenden Land and Cattle Company, R. R. Richardson, Naber Pachico, David Choate, A. G. Carroll, Thomas  
264 Smith, C. L. Douglas, L. Craft, Santiago Ainsa, administrator, with will annexed, of the estate of Frank Ely, deceased; Santiago Ainsa, trustee and administrator of the estate of Jose Juan Elias, deceased; Angel Verela, Elena Verela, Jesus Elias de Serrano, A. Smith, B. Smith, C. Smith, and D. Smith, their certain attorneys, executors, administrators, or assigus; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 5th day of September, in the year of our Lord one thousand eight hundred and ninety-four.

Whereas lately, at the court of private land claims of the United States, in a suit depending in said court, between Robert Perrin, complainant, and The United States of America, The Crittenden Land and Cattle Company, R. R. Richardson, Naber Pachico, David Choate, A. G. Carroll, Thomas Smith, C. L. Douglas, L. Craft, Santiago Ainsa, administrator, with will annexed, of the estate of Frank Ely, deceased; Santiago Ainsa, trustee and administrator of the estate of Jose Juan Elias, deceased; Angel Verela, Elena Verela, Jesus Elias de Serrano, A. Smith, B. Smith, C. Smith, and D. Smith,

respondents, a decree was rendered against the said Robert Perrin, and the said Robert Perrin having obtained an appeal from said decree, and said appeal having been duly allowed, and a copy of the order allowing the same having been filed in the clerk's office of the said court to reverse the said decree in the aforesaid suit, and a citation having been directed to the said respondents, citing and admonishing them to be and appear at a session of the Supreme Court of the United States to be holden at the city of Washington,

District of Columbia, on the second Monday of October next:

265 Now, the condition of the above obligation is such that if the said Robert Perrin shall prosecute said appeal to effect and answer all damages and costs if he fail to make the said plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) ROBERT PERRIN,

(Signed) By E. B. PERRIN,

*Attorney-in-fact for Robert Perrin.*

(Signed) LILO McMULLIN PERRIN.

(Signed) E. B. PERRIN.

[SEAL.]  
[SEAL.]  
[SEAL.]

Sealed and delivered in presence of—

(Signed) J. H. MEREDITH.

Approved by—

—, Judge.

In my opinion the sureties in the above bond afford adequate security for the condition therein mentioned.

(Signed) JOSEPH McKENNA,  
U. S. Circuit Judge.

266

*Certificate of Clerk.*

UNITED STATES OF AMERICA, } ss :  
Territory of Arizona,

I, James H. Reeder, clerk of the court of private land claims, do hereby certify that the foregoing is a full, true, and correct transcript of the papers, records, testimony, exhibits, proceedings, and judgment in the case entitled Robert Perrin vs. United States et als., No. 3½ (San Ygnacio de Babocomari grant), as the same appears in the records of my office.

I further certify that no opinion of the court has been filed in such cause.

In witness whereof I have hereunto set my hand and the seal of said court this 9th day of October, 1894.

[Seal Court of Private Land Claims, Tucson, Arizona.]

JAMES H. REEDER, Clerk.

R. L. LONG, Deputy Clerk.

Endorsed on cover: Case No. 15,724. Court of private land claims. Term No., 840. Robert Perrin, appellant, vs. The United States, The Crittenden Land & Cattle Company, et al. Filed November 10, 1894.

IN THE  
**Supreme Court of the United States.**  
**OCTOBER TERM, 1897.**

---

ROBERT PERRIN, APPELLANT,

*vs.*

THE UNITED STATES, APPELLEE.

---

*No. 30.*

---

**Additional Parts of the Record in this Cause which are brought into it by a Stipulation of the Attorneys of the Respective Parties to which said Papers are Appended.**

Copy of the record and proceedings had in the measurement of eight *sitios para cria de ganado mayor y caballada* (live-stock ranch) in the localities called "San Ygnacio del Bayocómari" in behalf of the citizen Ygnacio Elias and Doña Eulalia Elias.

{ Seal of the Treasury General of the }  
{ State of Sonora, Feb. 8, 1898. }

A fifty-cent stamp, duly cancelled. Citizen Treasurer General: Ygnacio Bonillas, a resident of Nogales, and temporarily in this capital, appears before you and states: That, as appears by the letter, the original of which I hereto annex, of Mr. Robert Perrin, owner of the land known as

"San Ygnacio del Bavocómari," situate in the territory of Arizona, United States of the North, needs a certified copy of the record relating to said land existing in the archives of the Treasury under your worthy charge; and the said Mr. Perrin having authorized me to solicit the said copy in his name, I pray you to be pleased to order that the said exemplified copy issue to me for the purposes that may suit the interested party. I make all necessary protestations. Hermosillo, February 5, 1898. Ygnacio Bonillas. Received on the seventh instant, and let the copy requested issue as prayed. V. Aguilar. (A sign manual.)

Stamp, 3rd class. 2 reales. Years 1822 and 1823. Qualified. The Constitution sworn to by the King on March 9, 1820. Qualified by the State of the West for the years 1827 and 1828. A stamp which reads: "Qualified by the Mexican Republic for the years 1824 and 1825."

Mr. Treasurer General: Don Ygnacio Elias and Doña Eulalia Elias, before Y. H. appear in due form and say: That needing land for suburban property, they, in company with Don Rafael Elias, Captain Don Ygnacio Elias and Don Nepomuceno Felix, denounce the public land bordering on the San Pedro ranch, within the limits of Santa Cruz, as far as the point of Tres Alamos, binding ourselves to pay to the Nation the corresponding fees and to perform all else that justice may require until we acquire title through grant and confirmation, to which end you will be pleased to hold the said public land as recorded and denounced. Wherefore we pray you to order that what we petition be done, thereby granting us grace. Arispe, March 12, 1827. By consent and at the request of Don Ygno. Elias. Joaquín Elias. (A sign manual.) Eulalia Elias. (A sign manual.)

Cosala, July 1, 1827.—The chief of police of Santa Cruz, by authority thereunto conferred upon him, without prejudice to third parties representing better rights, will proceed after citation of the abutting owners, to the measurement, valuation and crying for thirty consecutive days, of the lands mentioned in the foregoing denouncement, following in all things the sovereign decree No. 30 of the Honorable Constitutional Congress of the State, of May 20, 1825, and the regulations accompanying the same; and after having carried out these proceedings, he will make return of the same to this Treasury, notifying the bidders that may present themselves to appear in person or by attorney at the auction



which must be held in the said office after the customary three public auctions. The Treasurer General of the State, Nicolas Ma. Gaxiola, so decreed and signed. Gaxiola. (A sign manual.)

In the presidio of Santa Cruz, on the fifth day of the month of October of eighteen hundred and twenty-eight. Pursuant to the foregoing decree of the Treasurer General, let the provisions of the said decree dated July 1, 1827, be executed, and to that end, after summoning the interested parties, abutting owners, expert surveyor, and other necessary officials which must be named, and calling for me, go to the hacienda of San Pedro for the purpose of proceeding with the measurement of the *sitios* desired by the parties in interest. The citizen Alejandro Franco, constitutional alcalde of the presidio of Santa Cruz, by this decree so ordered and signed, with the assistants commissioned to act with him in default of a notary, according to law. For Alejandro Franco, Ramón Romero. Assistant, Ramón Romero. Assistant, Franco. Gauna.

At the hacienda of San Pedro, on the eighteenth day of the month of October of eighteen hundred and twenty-eight, I, the said judge, there being present the citizen Ygnacio Elias, for himself and as attorney for his sister, Doña Eulalia; the abutting owners, citizen Captain Ygnacio Elias and Nepomuceno Felix; the expert surveyor, citizen José Maria Caballero, Lieutenant Colonel of Engineers; whom I notified, and to whom I made known the foregoing decree, and who stated that they understood the same and acknowledged service of the summons and appointments; designated the twentieth day of the same month as the time to proceed to the measurement; and they signed with me and my assistants in the usual form. For Alejandro Franco, Ramón Romero. (A sign manual.) Ygno. Elias. (A sign manual.) Juan Nepomuceno Felix. (A sign manual.) José de Caballero. (A sign manual.) Assistant, Ramón Romero. (A sign manual.) Assistant, Franco. Gauna. (A sign manual.)

Having arrived at the place named, San Ygnacio del Bavocómari, on the twentieth day of the same month and year, the point where the surveys of the citizens Captain Ygno. Elias Gonzales and Nepomuceno Felix end—in a direction east-northwest by west-southwest—accompanied by the party in interest, the expert surveyor, the officials which must be named and assistants, I ordered that before begin-

ping the survey a reconnoissance or visual inspection be made of the land to be surveyed on the petition of the citizen Ygnacio Elias and his principal, Doña Eulalia. And after inspecting it thoroughly, I found it to be ample for the raising of live stock, the greater part having water flowing from permanent springs; but also having the one drawback of being dangerous as it furnishes hiding places for the Apache enemy. And in order that it may appear of record, I make it a part hereof, which I signed with my assistants who act with me. For Alejandro Franco, Ramón Romero. (A sign manual.) Ygno. Elias. (A sign manual.) Juan Nepomuceno Felix. (A sign manual.) Ygno. Elias Gonzales. (A sign manual.) José de Caballero. (A sign manual.) Assistant, Ramón Romero. (A sign manual.) Assistant, Franco. Gauna. (A sign manual.)

On the same day, month and year, I, the judge commissioned to proceed to the survey of the land denounced, on a bald hill, in front of the small marsh of San Ygnacio del Bavocómari, appointed the citizen Lorenzo Sortillon as counter; the citizens Andres Mendoza and Pablo Elias as chainmen; the citizens Antonio Campoy and Mauricio Neiva as rodmen; and together with the expert surveyor, citizen Lieutenant Colonel José Ma. Caballero, they accepting the said appointments, and each taking the customary oath in proper form to faithfully and lawfully discharge the duty assigned to each one, without fraud or deception, and to each act according to his best knowledge and understanding, and those who could signed with me and my assistants in the ordinary form, to which I certify. For Alejandro Franco, Ramón Romero. (A sign manual.) Lorenzo Sortillon. (A sign manual.) Pablo Elias. (A sign manual.) For Andres Montoya, Antonio Campoy and Mauricio Neiva, Francisco Gauna. (A sign manual.) Assistant, Ramón Romero. Assistant, Francisco Gauna. (A sign manual.)

On the same spot, and on the day, month and year, there being present the parties interested, officials and assistants named, in order to proceed to the survey, I ordered that a cord of fifty *varas* be measured, and tying its ends to two poles, the said survey was commenced by the expert surveyor citizen José M. Caballero, who, placing his compass, took the angle: East-northeast one-quarter east by west-southwest one-quarter west, where I caused a monument in the shape of a cross to be placed. From that point, in the said direc-

tion, one hundred cords were measured and counted, terminating at a little valley near some bald hills where I caused a monument to be set. And as it was late, I had the cord taken in and the officials and others withdraw to rest until the following day when the survey would continue; which I record and sign with my assistants and the others interested who accompanied me, to which I certify. For Alejandro Franco, Ramón Romero. (A sign manual.) Ygnacio Elias. (A sign manual.) Juan Nepomuceno Felix. (A sign manual.) Ygno. Elias Gonzales. (A sign manual.) Lorenzo Sortillon. (A sign manual.) For Anto. Campoy and Mauricio Neiva, Francisco Gauna. (A sign manual.) For Andres Montoya and myself, Pablo Elias. (A sign manual.) Assistant, Ramón Romero. Assistant, Francisco Gauna. (A sign manual)

On the spot where I ordered the second monument to be placed, called the valley of San Ygnacio del Bavocómari, accompanied by the party in interest, expert surveyor, officials appointed, and in order to continue the survey in the same direction, on the twenty first of the said month and year, I caused the customary fifty-vara cord to be remeasured; which done, its extremities were tied to two poles, and the cord being extended there were measured and counted in the same direction two hundred and forty-three cords, ending on the top of a hill facing south-southwest, where the survey was brought to a close owing to the broken condition of the ground and the many and deep gulleys lying in the direction of the course. By reason of this it became necessary for me and the expert surveyor to calculate the fifty-seven cords wanting to complete the side of the three *sitios para ganado mayor* (live-stock ranch), this calculation ending at the warm spring facing the Santa Rita range, at the foot of a bald hill, where I ordered a corner monument set, which faces the slope of the said range and warm spring. And from the said point, as the broken surface and deep gorges continue, in order to form the head line of these *sitios*, I and the expert surveyor, at right angles to the line mentioned, calculated in a direction northwest one-quarter north-northwest by southeast one-quarter south-southwest, seventy cords, to the base of a small poplar tree, which grows in a vale at the foot of the said Santa Rita range. And to complete the head line or square in an opposited direction—south-southwest one-quarter south-

east by north-northwest one-quarter northwest—the other forty cords were calculated, terminating at a hill where several oaks were growing, where I ordered the corresponding monuments to be placed. With these three *sitios para ganado mayor* (live-stock ranch) and the survey of the previous day four *sitios* were completed; and as it was past midday, I ordered that we withdraw to the central monument; which we did. Having reached the said monument in front of the San Ygnacio del Bavocómari marsh; the fifty-vara cord having been again examined, and its extremities having been tied to the two poles aforesaid, and the cord extended in a direction west-southeast by east-northwest, there were measured and counted seventy-four cords, which terminated on the top of some hills in the vicinity of the water point, where, night having fallen, the survey for this day was finished, all retiring to rest. Which I record, signing it with the party in interest, expert surveyor, officials named and assistants, to which I certify. For Alejandro Franco, Ramón Romero. (A sign manual.) Yguo. Elias. (A sign manual.) Juan Nepomuceno Felix. (A sign manual.) Lorenzo Sortillon. For Andres Montoya and for myself, Pablo Elias. (A sign manual.) For Antonio Campoy and Mauricio Neiva, Franco. Gauna. (A sign manual.) Yguo. Elias Gonzales. (A sign manual.) José de Caballero. (A sign manual.) Assistant, Ramón Romero. Assistant, Francisco Gauna. (Sign manual.)

At the place aforesaid, on the twenty-second day of the said month and year, I, the judge commissioned, the party interested, expert surveyor, and other officials appointed, having caused the fifty-vara cord to be examined, as also the course of the previous day, the cord being extended in this same direction, twenty-six cords were measured and counted, so as to complete one hundred cords for the side of one *sitio de ganado mayor*, and in the same direction, passing the cord over several hills and gulleys, three hundred cords were measured and counted, the latter crossing a valley in the vicinity of the spring-fed pools, and terminating above the said pools at a rocky hill where I ordered a corner monument to be placed, thus completing the side of the other four *sitios para ganado mayor*. The compass being placed here by the expert surveyor, and the cord being placed so as to form a right angle (or ninety degrees) with the former line; the cord having

been examined and extended in a direction south-southwest one-quarter southeast by north-northwest one-quarter northwest, forty cords were measured and counted, corresponding to those of the head line of the other four *sitios*, and terminating on top of some bald hills, where I ordered a corner monument placed, and returning to the center of this head line in an opposite direction—north-northwest one-quarter northwest by south-southwest one-quarter southeast—sixty cords were measured and counted to complete the one hundred cords, the latter ending on top of a very high hill. This finished the survey of the eight *sitios para ganado mayor* recorded by the citizen Ygnacio Elias and his sister Doña Eulalia. He acknowledged that he was satisfied with the said measurements, and advised that he would opportunely designate its bounds with monuments of mortar and stone, as is provided. And that it may so appear he signed with me and those who knew how, together with the assistants acting with me, through want of a notary, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Ygno. Elias. (A sign manual.) Lorenzo Sortillon. (A sign manual.) For Andres Montoya and for myself, Pablo Elias. (A sign manual.) Juan Nepomuceno Felix. (A sign manual.) For Anto. Campoy and Mauricio Neiva, Francisco Gauna. (A sign manual.) Ygno. Elias Gonzales. (A sign manual.) José de Caballero. (A sign manual.) Assistant, Ramón Romero. Assistant, Franco. Gauna. (A sign manual.)

At the hacienda of San Pedro, on the twenty-fourth day of October of eighteen hundred and twenty-eight, I, the judge commissioned to proceed to the appraisement and valuation of the lands surveyed in behalf of the said citizen Ygnacio Elias and his sister Doña Eulalia, the two comprising eight *sitios para ganado mayor*, have seen fit to appoint as appraisers, knowing that they possess the necessary knowledge, the citizens Pablo Elias and Ramón Romero, residents of the presidio of Santa Cruz, and who were present at the survey; who having been apprised of the said appointment, accepted the same, and each made oath in due form, promising to make the appraisement without any fraud, deception or concealment whatsoever; and pursuant thereto they stated, in conformity and accordance with the reconnaissance they have made and informed of the orders governing the subject, that they ought to set and do set the value of

sixty pesos for each of the six *sitios de ganado mayor*, as they have a permanent water supply, and for the two remaining to complete the eight *sitios de ganado mayor*, ten pesos each, as they are absolutely bereft of water; which gives the eight *sitios de ganado mayor* a total value of three hundred and eighty pesos; and having read this declaration to the appraisers, they ratified and signed the same with me and my assistants, with whom I act through commission, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Pablo Elias. (A sign manual.) Ramón Romero. (A sign manual.) Assistant, Ramón Romero. Assistant, Franco. Gauna. (A sign manual.)

In the presidio of Santa Cruz, on the twenty-ninth of the said month and year, I, the judge commissioned, having returned to this presidio and pursuant to the foregoing proceedings and appraisal of the lands mentioned in behalf of the citizen Ygnacio Elias and his sister Doña Eulalia, comprising eight *sitios de ganado mayor y menor*, ordered that they be cried for thirty consecutive days reckoned from tomorrow, pursuant to the provisions of law. The judge commissioned so ordered and signed with the assistants, to which I certify. For Alejandro Franco, Ramón Romero. (A sign manual.) Assistant, Ramón Romero. (A sign manual.) Assistant, Franco. Gauna. (A sign manual.)

First cry. At the same place, on the thirtieth day of the month of October of the said year, I, the said judge of the said presidio, caused several persons to assemble in the public plaza of the said presidio, by sounding the drum, and in the presence of all of them the crier, Gregorio Gallegos, announced in a high and clear voice: "The lands of the place named San Ygnacio del Bavocómari, situate in this jurisdiction and comprising eight *sitios de cria de ganado mayor y menor*, in behalf of the citizen Ygnacio Elias and his sister Doña Eulalia appraised in the sum of three hundred and eighty pesos, are for sale per account of the nation. Whoever wishes to made a bid, whatever bid he makes passing before me will be accepted." And no bidder having appeared, a record was made which I signed with my assistants according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Assistant, Ramón Romero. (A sign manual.) Assistant, Franco. Gauna. (A sign manual.)

Second cry. In the same presidio, on the thirty-first day

of the said month and year, a publication by crier similar in every way to the foregoing was made, and no bidders appearing I recorded the fact, which I signed with the assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Assistant, Ramón Romero. (A sign manual.) Assistant, Francisco Gauna. (A sign manual.)

Third cry. In the same presidio, on the first day of November of eighteen hundred and twenty-eight another publication was made, and no bidders having appeared, a record was made which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Assistant, Ramón Romero. (A sign manual.) Assistant, Franco. Gauna. (A sign manual.)

Fourth cry. In the said presidio, on the second day said month and year, another publication was made, and no bidder appearing this record was made, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Assistant, Ramón Romero. (A sign manual.) Assistant, Franco. Gauna. (A sign manual.)

Fifth cry. In the said presidio, on the third day of the said month and year, another publication was made, and no bidder appearing the fact was recorded, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Assistant, Ramón Romero. (A sign manual.) Assistant, Franco. Gauna. (A sign manual.)

Sixth cry. In the said presidio, on the fourth day of the said month and year, another publication was made, and no bidder appearing, I made this record, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Seventh cry. In the said presidio, on the fifth day of the said month and year, another publication was made, and no bidder appearing, a record was made which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Eighth cry. In the said presidio, on the sixth day of the said month and year, another publication was made, and no bidder appearing, a record was made, which I signed with



my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Ninth cry. In the said presidio, on the seventh day of the said month and year, another publication was made, and no bidder appearing, a record was made, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Tenth cry. In the presidio aforesaid, on the eighth day of the current month and year, another publication was made, and no bidder appearing, the fact was recorded, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Eleventh cry. In the presidio aforesaid, on the ninth day of the said month and year, another publication was made, and no bidder appearing, a record was made, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Twelfth cry. In the said presidio, on the tenth day of the said month and year, another publication was made, and no bidder resulting, a record was made, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Thirteenth cry. In the said presidio, on the eleventh day of the said month and year, another publication was made and no bidder resulting a record was made, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Fourteenth cry. In the said presidio, on the twelfth day of the said month and year, another publication was made, and no bidder appearing, a record was made, which I signed with my assisting witnesses. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Fifteenth cry. In the presidio aforesaid, on the thirteenth

day of the said month and year, another publication was made, and there being no bidder, a record was made, which I signed with the assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Francisco Gauna. (A sign manual.)

Sixteenth cry. In the said presidio, on the fourteenth day of the said month and year, another publication was made, and no bidder appearing, a record was made, which I signed with the assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Franco. Gauna. (Sign manuals.)

Seventeenth cry. In the said presidio, on the fifteenth day of the said month and year, another publication was made, and no bidder appearing, a record was made, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Franco. Gauna. (Sign manuals.)

Eighteenth cry. In the presidio aforesaid, on the sixteenth day of the said month and year, another publication was made, and no bidder resulting, the fact was recorded, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Franco. Gauna. (Sign manuals.)

Nineteenth cry. In the said presidio, on the seventeenth day of the said month and year, another publication was made, and no bidder resulting, the fact was recorded, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Francisco Gauna. (Sign manuals.)

Twentieth cry. In the said presidio, on the eighteenth day of the said month and year, another publication was made, and no bidder resulting, the fact was recorded, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Francisco Gauna. (Sign manuals.)

Twenty-first cry. In the presidio aforesaid, on the nineteenth day of the said month and year, another publication was made, and no bidder resulting, a record was made, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Franco. Gauna. (Sign manuals.)

Twenty-second cry. In the said presidio, on the twentieth

day of the said month and year, another publication was made, and no bidder appearing, a record was made, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Francisco Gauna. (Sign manuals.)

Twenty-third cry. In the said presidio, on the twenty-first day of the said month and year, another publication was made, and there being no bidder, a record was made, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Francisco Gauna. (Sign manuals.)

Twenty-fourth cry. In the said presidio, on the twenty-second day of the said month and year, another publication was made, and no bidder resulting, a record was made, which I signed with the assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Francisco Gauna. (Sign manuals.)

Twenty-fifth cry. In the said presidio, on the twenty-third day of the said month and year, another publication was made, and no bidder appearing, a record was made, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Francisco Gauna. (Sign manuals.)

Twenty-sixth cry. In the said presidio aforesaid, on the twenty-fourth day of the said month and year, another publication was made, and no bidder resulting, the fact was recorded, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Francisco Gauna. (Sign manuals.)

Twenty-seventh —. In the said presidio, on the twenty-fifth day of the said month and year, another publication was made, and no bidder appearing, the fact was recorded, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Francisco Gauna. (Sign manuals.)

Twenty-eighth cry. In the said presidio, on the twenty-sixth day of the said month and year, another publication was made, and there being no bidder, the fact was recorded, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. Asst., Ramón Romero. Asst., Francisco Gauna. (Sign manuals.)

Twenty-ninth cry. In the said presidio, on the twenty-seventh of the said month and year, another publication was

made, and no bidder resulting, the fact was recorded, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Franco. Gauna. (Sign manuals.)

Thirtieth cry. In the presidio aforesaid, on the twenty-eighth day of the said month and year, the last cry was made, and no bidder resulting, the record thereof was made, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Franco. Gauna. (Sign manuals.)

In the said presidio, on the said day, month and year, this return being concluded, let it be transmitted to the Treasurer General, issuing summons to the party in interest in order that, either in person or by attorney, he may go to the capital, Alamos, to be present at the three auctions of the lands cried, which are to be held in the said capital. I, the said commissioned judge, so ordered, decreed and signed, together with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Franco. Gauna. (Sign manuals.)

Immediately, on the said day, month and year, the citizen Ygnacio Elias being present, for himself and as attorney for his sister, Doña Eulalia, I notified him and made known to him the foregoing decree, and acknowledging service thereof, he signed with me and my assistants, with whom I act by default of a notary, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Ygnacio Elias. (A sign manual.) Asst., Ramón Romero. Asst., Franco. Gauna. (Sign manuals.)

NOTE.—This record was transmitted together with an official letter, dated November 30, 1828, to the Treasurer General of the State, and that it may so appear, I sign. Franco. (A sign manual.)

Alamos, December 19, 1828.—Refer it to the Comptroller of the Treasury of the State for opinion. Gaxiola. (A sign manual.)

Citizen Treasurer General: This record contains the survey of eight *sitios* of land for the raising of live stock, made by the alcalde of Santa Cruz in the localities known as San Ygnacio del Bavocómari. I see no objection to adjudicating the land to the claimants, unless the extent thereof exceeds that which may be granted by article 21 of the decree of May 20, 1825; but if you are secured as required

by the provisions of article 22, I am of the opinion that they should be adjudicated in favor of the petitioners, unless a higher bidder shall appear. Alamos, December 20, 1828. Felipe Gil. (A sign manual.)

Alamos, December 22, 1828.—Agreeing with the foregoing opinion of the Comptroller, I ought to and do hereby order that the members of the Board of Auction be assembled in order to hold the last three auctions and sell the land referred to in this record. Gaxiola. (A sign manual.)

First auction. In the city of Concepción de Alamos, on the twenty-second day of the month of December of eighteen hundred and twenty-eight, the president and members composing the Board of Auction being met for the purpose of holding the first auction of the lands to which this record refers, they resolved that by sounding the drum some citizens should be assembled in the office of this Treasury, and that in their presence the party acting as crier, Marcelo Parra, should proceed to cry out, as in fact he did, in a high and clear voice, saying: "The lands in the locality called San Ygnacio del Bavocómari, situate in the jurisdiction of the presidio de Santa Cruz, comprising eight *sitios* for the raising of live stock, surveyed in behalf of Don Ygnacio and Doña Eulalia Elias, and valued at three hundred and eighty *pesos*, are to be auctioned off. Whoever desires to make a higher bid, let him appear before this Board where his bid will be accepted." And no person whatever having appeared, the fact is herein recorded. Gaxiola. (A sign manual.) Almada. (A sign manual.) Gil. (A sign manual.)

Second auction. In the said city, on the twenty-third day of the month of December of eighteen hundred and twenty-eight, there being assembled in meeting the president and members composing the Board, for the purpose of holding the second public sale of the lands referred to in this record, they ordered that it be done in the same manner as the foregoing, which was done; the party acting as crier adding only that on tomorrow the final adjudication would be made. And no bidder appearing, the fact is herein made a matter of record, and this is signed by the members of the Board. Gaxiola. (A sign manual.) Almada. (A sign manual.) Gil. (A sign manual.)

Third auction. In the said city of Concepción, on the twenty-fourth day of the said month and year, the president and members of the said Board of Auction, in meeting

assembled, resolved that the third and last auction and final adjudication of the lands mentioned in this record should be proceeded with; which was done in the same manner as at the two former auctions, the crier adding only that the adjudication was to be made at the moment. And the noon-day prayer bell having been rung for this day, without any bidder appearing, the crier announced finally in a loud voice: "One, two, three. Going, going, going. Good, good, good, may it do Don Ygnacio and Doña Eulalia Elias. In this manner were these proceedings ended; the eight *sitios* of land for the raising of live stock, in the locality known as San Ygnacio del Bavocómari, in the jurisdiction of the presidio of Santa Cruz, being publicly and solemnly sold and adjudicated to the said interested parties in the sum of three hundred and eighty *pesos*, in which amount they were appraised. And in order that it may so duly appear this record was made and signed by the president and members of the Board, together with the citizen Captain Ygnacio Elias, as attorney-in-fact of the interested parties. Gaxiola. (A sign manual.) Almada. (A sign manual.) Gil. (A sign manual.) Ygnacio Elias Gonzales. (A sign manual.)

Arispe, October 19, 1832.—The full sum of three hundred and eighty *pesos*, in which amount the eight *sitios* of land included in the locality known as San Ygnacio del Bavocómari, in behalf of the citizen Ygnacio Elias and Doña Eulalia Elias, the former a resident of the town of Rayon, and the latter a resident of this capital, having been paid into the Treasury General of the United States, as is evidenced by the certificate annexed to the record, let the title through grant issue in due form for their protection. The Treasurer General of the State of Sonora so resolved and signed with assisting witnesses, according to law. Mendoza. (A sign manual.) Asst., Mariano Romo. (A sign manual.) Asst., Luis Carranco. (A sign manual.)

On December 25, 1832, a title through grant was issued for the Bavocómari land to which this record relates. Mendoza. (A sign manual.)

Nicolas Maria Gaxiola, Treasurer General of the Revenues of the State of the West, certifies: that at folio 3, reverse, of the manual of this Treasury, for the current year, under this date, the following entry appears: Charged to land grants, three hundred and eighty *pesos* paid by Captain Don Ygnacio Elias, on account of Don Ygnacio and Doña Eulalia Elias,

residents of Arispe, for eight *sitios* of land for the raising of live stock, in the locality called San Ygnacio del Bavacómari, in the jurisdiction of the presidio of Santa Cruz, appraised in the said amount, which were adjudicated to them without opposition in the Board of Auction at a meeting held in this Treasury on December 24th last. \$380.00. Gaxiola. (A sign manual.) Ygnacio Elias Gonzales. (A sign manual.)

And in order that it may so appear I issue these presents in Alamos, on the eighth of January of eighteen hundred and twenty-nine. Nicolas Maria Gaxiola. (A sign manual.)

Crossed out: "C," not valid. Inserted: "Lorenzo Sortillon, Juan Nepomuceno Felix," valid.

It is an exact copy of its original which I authenticate and sign in Hermosillo, on February eight of eighteen hundred and ninety-eight.

N. AGUILAR.



Copia del expediente y diligencias practicadas en la medida de ocho sitios para cria de ganado mayor y caballada en los parages nombrados "San Ygnacio del Babocómari" á favor del C<sup>o</sup> Ygnacio Elias y Doña Eulalia Elias.

(Tesoreria General, Estado de Sonora, Feb. 8, 1898.)

Una estampilla de cincuenta centavos debidamente cancelada. C<sup>o</sup> Tesorero General—Ygnacio Bonillas, vecino de Nogales, y accidentalmente en esta Capital, ante Ud comparezco y expongo: Que como consta por la carta que original acompaño, el Sr. Robert Perrin, dueño del terreno de nominado "San Ygnacio de Babocómari, situado en el Territorio de Arizona, Estado Unidos del Norte, necesita una copia certificada del expediente relativo á dicho terreno que existe en los archivos de la Tesoreria de su digno cargo, y habiendome autorizado dicho Sr. Perrin para que á su nombre solicite la copia referida, á Ud suplico se sirva disponer se me expida el testimonio correspondiente para los usos que al interesado convengan. Protesto lo necesario. Hermosillo, Febrero 5 de 1898. Ygnacio Bonillas. Recibido en siete del corriente, y como se solicita, expidase la copia que se pide. V. Aguilar. Rubrica. Sello 3<sup>o</sup>. 2 reales. Años de 1822 y 1823. Habilitado. Jurada por el Rey la Constitución en 9 de Marzo de 1820. Habilitado por el Estado de Occidente para los años de 1827 y '28. Un sello que dice: "Habilitado por la República Mexicana para los años de 1824 y '25. Señor Tesorero General: Don Ygnacio Elias y Doña Eulalia Elias, ante V. S., se presentan en debida forma y dicen: que necesitando terreno para bienes de campo, denuncian en consorcio de Don Rafael Elias, el Capitan Don Ygnacio Elias, y Don Nepomuceno Felix, el baldio que linda con el rancho de San Pedro, en la comprensión de Santa Cruz, hasta el punto de Tres Álamos, obligándonos á satisfacer á la nación los derechos que le correspondan con lo demas que fuere de justicia, hasta adquirir el titulo de merced y confirmacion, para cuyo efecto se ha de servir Ud haber por registrado y denunciado dicho terreno baldio, por tanto. A Ud suplicamos se sirva mandar proveer como solicitamos en lo que recibiremos merced. Arispe, 12 de marzo de 1827. Por auuencia y ruego de Don Ygn<sup>o</sup> Elias. Joaquin Elias.

Rubrica. Eulalia Elias. Rubrica. Cosala 1 de julio de 1827. El alcalde de policia de Santa Cruz, procederá con facultad que para ello se le confiere, sin perjuicio de tercero que mejor derecho represente y previa citación de los colindantes a las medidas avaluos y pregones por treinta dias consecutivos de las tierras que expresa el anterior denuncia, sujetándose en todo al soberano decreto del Honorable Congreso Constituyente del Estado, No. 30 de 20 de Mayo de 1825 y al reglamento que le acompaña, y evacuadas que sean dichas diligencias, las remitirá á esta Tesoreria, citando á los postores que resulten para que ocurran por sí ó por apoderados al remate que debe celebrarse en dicha oficina, previas las tres públicas almonedas de estilo. El Tesorero Gral del Estado, Nicolas M<sup>a</sup> Gaxiola, así lo decretó y firmó. Gaxiola. Rubrica. En el presidio de Santa Cruz, y á los cinco dias del mes de Octubre de mil ocho cientos ventiocho. En vista del antecedente decreto del Sr. Tesorero Gral, cúmplase lo mandado del citado decreto fecha 1<sup>o</sup> de julio de 1827; y al efecto, con citación de los interesados, colindantes, perito agrimensor y demas oficiales necesarios que se deberán nombrar, pásese por mí a la Hacienda de San Pedro, con el fin de que se proceda á la mensura de los sitios que los interesados desean. El C<sup>o</sup> Alejandro Franco, alcalde constitucional del Presidio de Santa Cruz, por éste auto, así lo determinó y firmó, con testigos de asistencia con quienes actúa por receptoría por falta de escribano segun derecho. Por Alejandro Franco, Ramon Romero. Asistencia—Ramon Romero. Asistencia—Franco Gauna. En la Hacienda de San Pedro y á los diez y ocho dias del mes de octubre de mil ochocientos veintiocho, Yó el expresado juez, siendo presente el C<sup>o</sup> Ygnacio Elias, por sí y como apoderado de su hermana D<sup>a</sup> Eulalia, los colindantes C<sup>o</sup> Capitan Ygnacio Elias y Nepomuceno Felix, el perito agrimensor Teniente Coronel de Yngenieros C<sup>o</sup> José Maria Caballero á quienes notifiqué e hice saber el auto que antecede de que quedaron entendidos y dándose por citados y nombrados se señaló el dia veinte del mismo mes para marchar á proceder a la medida, lo que firmaron conmigo y los de mi asistencia en la forma ordinaria. Por Alejandro Franco—Ramon Romero. Rubrica. Ygn<sup>o</sup> Elias. Rubrica. Juan Nepomuceno Felix. Rubrica. José de Caballero. Rubrica. Asis<sup>a</sup>—Ramon Romero. Rubrica. Asist<sup>a</sup>—Franco Gauna. Rubrica. Habienda llegado al puesto nombrado, San Ygnacio

de Bavocómari, el día veinte del mismo mes y año como punto en que rematan las medidas de los CC Capitan Ygn<sup>o</sup> Elias Gonzales y Nepomuceno Felix: por el rumbo Este Noroeste para Ueste Suroeste, acompañado del interesado, perito agrimensor, oficiales que se han de nombrar y testigos de assist<sup>a</sup>., mande que antes de comenzar la medida se hiciera una inspección ó vista de ojo de los terrenos que se iban á mensurar á pedimento del C<sup>o</sup> Ygnacio Elias y su poderdante D<sup>a</sup> Eulalia, y despues de bien reconocidos, hallé ser unos parages amplios para cria de ganado mayor y menor con agua la mayor parte de ellos procedente de ojos permanentes, con solo la nulidad de ser muy resgosos con abrigaderos del enemigo apache. Y para constancia lo pongo por diligencia que firmé con los de mi asistencia con quienes actúo. Por Alejandro Franco—Ramon Romero. Rúbrica. Ygn<sup>o</sup> Elias. Rubrica. Juan Nepomuceno Felix. Rubrica. Ygn<sup>o</sup> Elias Gonzales. Rubrica. Jose de Caballero. Rubrica. Asst<sup>a</sup> Ramon Romero. Rubrica. Asist<sup>a</sup>—Franco Gauna. Rubrica. En el mismo día, mes, y año, yó el juez comisionado, a efecto de proceder á la mensura del terreno denunciado, en una loma pelona, frente de la Cieneguita de San Ygnacio de Bavocómari, nombré para contador al C<sup>o</sup> Lorenzo Sortillon, para cadeneros á los CC<sup>o</sup> Andrés Mendoza y Pablo Elias, para apuntadores á los C. C. Antonio Campoy y Mauricio Neiva, y juntos con el perito agrimensor C<sup>o</sup> Teniente Coronel José M<sup>a</sup> Caballero, aceptaron los enunciados cargos, prestando cada uno de por sí y en la forma correspondiente el juramento de estilo de usar fiel y legalmente de los cargos que á cada uno corresponden, sin dolo ni fraude y obrando cada uno segun su leal saber y entender, y lo firmaron los que supieron conmigo y los de mi asistencia en la forma ordinaria de que doy fé. Por Alejandro Franco—Ramon Romero. Rubrica. Lorenzo Sortillon. Rubrica. Pablo Elias. Rubrica. Por Andres Montoya. Por Antonio Campoy, y Mauricio Neiva. Francisco Gauna. Rubrica. Asist<sup>a</sup>—Ramon Romero. Asista. Franco Guana. Rubrica. En el referido puesto y el mismo día, mes y año, para proceder á la medida, estando presentes los interesados, oficiales nombrados y testigos de asistencia, mandé que se midiera un cordel de cincuenta varas, y atados sus extremos á dos astas, se precedió á la enunciada mensura por el perito agrimensor C Jose M. Caballero, quien colocando el agujon tomó el viento Este Noroeste, cuarto al Este para Ueste

Surueste, cuarto al Ueste, donde hice poner mohonera cruz, y desde dicho puesto, por el referido punto, se midieron y contaron cien cordeles que remataron en un vallecito con inmediacion á unas lomas pelonas en donde hice poner mohonera, y por ser ya tarde hice recoger la cuerda y que los oficiales y demas se retirasen a descansar hasta el dia siguiente que continuase la medida, lo que pongo por diligencia y lo firmo con los de mí asistencia y demas interesados que me acompañaban de que doy fé. Por Alejandro Franco. Ramon Romero. Rubrica. Ygnacio Elias. Rubrica. Juan Nepomuceno Felix. Rubrica. Ygno. Elias Gonzales. Rubrica. Lorenzo Sortillon. Rubrica. José de Caballero. Rubrica. Por Anto. Campoy y Mauricio Neiva. Francisco Gauna. Rubrica. Por Andres Montoya y por mí. Pablo Elias. Rubrica. Asist. Ramon Romero. Asist. Franco Gauna. Rubrica. En el parage en que mande poner la segunda mohonera, nombrado el valle de San Ygnacio de Bavocómari, y acompañado del interesado, perito agrimensor, oficiales nombrados, para continuar la medida por el mismo rumbo, y á los veinte y un dias del mismo mes y año, hice reconocer de nuevo la cuerda de á cincuenta varas usuales, y reconocida que fué se amarraron sus extremos en dos astas y tendida la cuerda se midieron y contaron por el mismo rumbo doscientos cuarenta y tres cordeles que remataron en cima de una loma, que dá vista al viento sur surueste en donde se suspendió la medida por lo fragoso de la tierra muchas y profundas cañadas que se presentaban por el rumbo de ésta medida, por lo que fue de necesidad por mí y por el perito agrimensor hacer la regulacion de cincuenta y siete cordeles mas, para el completo del costado de tres sitios para ganado mayor terminando esta regulacion en el ojo de la agua caliente frentero de la Sierra de Santa Rita al pie de una loma pelona en donde mandé poner Mohonera esquina que dá vista á la falda de la expresada sierra y enunciado ojo de la agua caliente y desde dicho punto, por seguir la fragosidad del terreno y profundas cañadas para dar la cabecera de estos sitios por mí y por el perito agrimensor á ezcudra de la medida ya expresada por el viento referido, regulamos por el viento Norueste cuarto al Nornorueste, para sueste cuarto al Sursurueste—sesenta cordeles hasta el pie de un alamito que queda en un pequeño valle al pie de la enunciada Sierra de Santa Rita y para el completo de la cabecera ó

cuadra por el viento opuesto Sursurueste cuarto al Sueste para el Nornorueste cuarto al Noroeste se regularon los otros cuarenta cordeles que terminaron en una loma que tenia varios encimos en donde mandé que se pusieran las correspondientes mohoneras, con lo que con estos tres sitios para ganado mayor y el medido del día anterior se completaron cuatro sitios; y por ser mas del medio día, mande nos retirasen para la mahonera del centro como en efecto, habiendo llegado á la expresada mahonera del frente de la cienega de San Ygnacio del Bavocómari, hecho reconocer de nuevo la cuerda de cincuenta varas y amarrados sus extremos a las expresadas dos astas tendida la cuerda por el rumbo Oeste Sueste para Este norueste se midieron y contaron setenta y cuatro cordeles, que terminaron encima de unas lomas con inmediacion á la punta de la agua, en donde por ser ya noche se concluye la medida de este día retirándonos todos á descansar, lo que pongo por diligencia firmandolo con el interesado, perito agrimensor, oficiales nombrados y testigos de asistencia de que doy fé. Por Alejandro Franco. Ramon Romero. Rúbrica. Ygno. Elias. Rúbrica. Juan Nepomuceno Felix. Rubrica. Lorenzo Sortillon. Por Andres Montoya y por mi Pablo Elias. Rubrica. Por Antonio Campoy y Mauricio Neiva. Franco. Gauna. Rúbrica. Ygn<sup>o</sup> Elias Gonzales. Rubrica. José de Caballero. Rubrica. Asist<sup>o</sup> Ramon Romero. Asist., Francisco Gauna. Rubricas. En el referido puesto y á los veintidos dias del mismo mes y año, yó el Juez comisionado, el interado, perito agrimensor y demas oficiales nombrados, hecha reconocer la cuerda de cincuenta varas y el rumbo del día anterior por éste mismo rumbo, tendida la cuerda, se midieron y contaron veintiseis cordeles para el completo de cien cordeles para el costado de un sitio de ganado mayor, y por el mismo rumbo, pasando la cuerda por encima de varias lomas y cañadas, se midieron y contaron trescientos cordeles pasando los últimos por un valle con inmediación a los tanques del ojo de agua y terminando estos arriba de los expresados tanques en una loma pedregosa, en donde mande poner mohonera, esquina con la que se completó el costado de los otros cuatro sitios para ganado mayor en donde puesto el agujon por el perito agrimensor, puesta la cuerda escuadra y formando con el rumbo anterior un angulo recto ó de noventa grados, reconocida la cuerda y tendida por el rumbo sursurueste, cuatro al sueste para el nornorueste, cuarto al

norueste, se midieron y contaron cuarenta cordeles correspondientes á los del anterior cabeceado de los otros cuatro sitios terminando estos encima de unas lomas pelonas en donde mande poner mohonera esquina y volviendo al centro de la medida de esta cabecera por el rumbo opuesto, nornoru-este cuarto al norueste para el sursurueste cuarto de sueste se midieron y contaron sesenta cordeles para el completo de los cien cordeles terminando estos en la cima de un cerro muy encumbrado con lo que se concluyó la medida efectuandose el total de los ocho sitios para ganado mayor registrados por el C<sup>o</sup> Ygnacio Elias y su hermana Doña Eulalia, y dándose por recibido quedó conforme con las expresadas medidas advertido que oportunamente señalará sus linderos con mohoneras de cal y canto segun está prevenido; y para constancia lo firmó conmigo y todos los que supieron con los de mi asistencia con quienes actuó por receptoria a falta de escribano segun derecho. Por Alejandro Franco. Ramon Romero. Rubrica. Ygu<sup>o</sup> Elias. Rubrica. Lorenzo Sortillon. Rubrica. Por Andres Montoya y por mi. Pablo Elias. Rubrica. Juan Nepouceno Felix. Por Anto. Campoy y Mauricio Neiva. Franco Gauna. Rubrica. Ygno. Elias Gonzales. Rubrica. José de Caballero. Rubrica. Asist. Ramon Romero. Asist<sup>a</sup>. Franco. Gauna. Rubrica. En la hacienda de San Pedro y á los veinticuatro dias del mes de Octubre de mil ochocientos veintiocho. Yó el Juez comisionado para proceder al aprecio y avalúo de los terrenos mensurados á favor del citado C<sup>o</sup> Ygnacio Elias y su hermana Doña Eulalia, compuestos entre ambos de ocho sitios para ganado mayor, tuve á bien nombrar para tales abalua-dores por constarme tener los conocimientos necesarios á los CC. Pablo Elias y Ramon Romero, vecinos del presidio de Santa Cruz, quienes se hallaron presentes a la medida y hé-choles saber dicho nombramiento lo aceptaron y juraron en la forma que a cada uno corresponde, prometiendo hacer el avalúo sin dolo, fraude ni encubierta alguna y en esta virtud dijeron de conformidad y segun el reconocimiento que tienen hecho é impuestos en las ordenes que rigen sobre la materia, el que debe dárseles y les dan el valor de sesenta pesos á cada uno de los seis sitios de ganado mayor por tener agua permanente y a los otros dos restantes para el completo de los ocho sitios de ganado mayor, el de diez pesos cada uno por carecer en lo absoluto de agua con lo que suma el total de los ocho sitios para ganado mayor

el valor de trescientos ochenta pesos, y habiendoles leído á los avaluadores ésta declaracion la ratificaron y firmaron conmigo y los de mi asistencia con quienes actúo por receptoria segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. Pablo Elias. Rubrica. Ramon Romero. Rubrica. Asist., Ramon Romero. Asist., Franco. Gauna. Rubrica. En el presidio de Santa Cruz, a los Veintinueve dias del expresado mes y año, yó el Juez comisionado habiendo regresado á este Presidio y en vista de las antecedentes diligencias y avalúo de las tierras mercenadas al C. Ygnacio Elias y su hermana Doña Eulalia, compuestos de ocho sitios para cria de ganado mayor y menor, mandé se saquen al pregon por treinta dias consecutivos contados desde el dia de mañana segun se previene por la ley. Así lo proveyó y firmó el Sr Juez comisionado con los testigos de asistencia de que doy fé. Por Alejandro Franco—Ramon Romero. Rúbrica. Asist. Ramon Romero. Rubrica. Asist. Franco. Gauna. Rubrica. 1º pregon. En el mismo puesto, y á los treinta dias del mes de Octubre del referido año, yó el enunciado juez del mismo Presidio, hice que á son de caja se convocasen en la plaza pública del citado Presidio varios individuos y que en presencia de todos ellos dijese el pregonero Gregorio Gallegos en altas y claras voces. Las tierras del Parage nombrado San Ygnacio del Bavocómari sitas en esta Jurisdiccion y comprensivas para ocho sitios de cria de ganado mayor y menor á favor del C. Ygnacio Elias y su hermana Doña Eulalia, avaluadas en la cantidad de trescientos ochenta pesos se venden de cuenta de la Nacion; quien quisiera hacer postura se le admitirá la que hiciere concurriendo ante mí. Y no habiendo resultado postor alguno se puso por diligencia que firmé con los de mi asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. Asist—Ramon Romero. Rubrica. Asist. Franco. Gauna. Rubrica. 2º Pregon. En el mismo Presidio á los treinta y un dias del citado año y mes, se dió otro pregon igual en todo al anterior y no habiendose presentado postor lo puse por diligencia que firmo con los de asistencia, según derecho. Por Alejandro Franco—Ramon Romero. Rubrica. Asist., Ramon Romero. Rubrica. Asist., Francisco Gauna. Rubrica. e Pregon. En el expresado presidio á primero de Noviembre de mil ochocientos ventiocho se dió otro pregon, y no habiéndose presentado postores se puso por diligencia que firme con los de



asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. Asist<sup>a</sup>., Ramon Romero. Rubrica. Asist<sup>a</sup>., Franco. Gauna. Rúbrica. 4 Pregon. En el citado Presidio á los dos dias del mes y año citados, se dió otro pregon, y no compareciendo postor sepuso ésta diligencia que firmé con los de mi asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. Asistencia—Ramon Romero. Rúbrica. Asistencia, Franco. Gauna. Rubrica. 5 Pregon. En el citado presidio a los tres dias del relacionado mes y año se dió otro pregon y no habiendo resultado postor se puso por diligencia que firmé con los de asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. Asist—Ramon Romero. Rubrica. Asist<sup>a</sup>., Franco Gauna. Rubrica. 6 Pregon. En el referido presidio á los cuatro dias del expresado mes y año se dió otro pregon y no habiendo ocurrido poso puse ésta diligencia que firmé con los de asistencia. Por Alejandro Franco—Ramon Romero. Rubrica. A. Ramón Romero. Rubrica. A. Franco. Gauna. Rubrica. 7 Pregon. En el mismo Presidio a los cinco dias del mencionado mes y año, se dió otro pregon y no habiendo comparecido postor, se puso por diligencia que firmé con los de mi asistencia. Por Alejandro Franco—Ramon Romero. Rúbrica. A. Ramon Romero. Rubrica. A. Franco. Gauna. Rúbrica. 8 Pregon. En el citado Presidio á los seis dias del citado mes y año se dió otro pregon y no habiendo comparecido postor, se puso por diligencia que firmé con los de asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. A. Ramon Romero. Rubrica. A. Franco—Gauna. Rubrica. 9 Pregon. En el mencionado Presidio á los siete dias del mismo mes y año se dió otro pregon y no habiendo ocurrido postor se puso por diligencia que firmé con los de asistencia. Por Alejandro Franco—Ramon Romero. Rubrica. A., Ramon Romero. Rubrica. A., Franco. Gauna. Rúbrica. 10 Pregon. En el relacionado Presidio á los ocho dias del mes y año corriente se dió otro pregon y no habiendo resultado postor se puso por diligencia que firmé con los de mi asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rúbrica. A., Ramon Romero. Rubrica. A., Franco. Gauna. Rubrica. 11 Pregon. En el expresado Presidio á los nueve dias del mismo mes y año, se dió otro pregon y no habiendo comparecido postor se puso por diligencia que firmé con los de

mi asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. A., Ramon Romero. Rubrica. A., Franco. Gauna. Rubrica. 12 Pregon. En el citado presidio á los diez dias del citado mes y año, se dió otro pregon y no habiendo resultado postores se puso por diligencia que firmé con los de asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. A., Ramon Romero. Rubrica. A., Franco. Gauna. Rubrica. 13 Pregon. En el mismo Presidio á los once dias del citado mes y año se dió otro pregon y no habiendo resultado postor se puso por diligencia que firme con los de asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rúbrica. A. Ramon Romero. Rubrica. A., Franco. Gauna. Rúbrica. 14 Pregon. En el citado Presidio á los doce dias del mismo mes y año se dió otro pregon y no habiendo comparecido postor, se pudo por diligencia que firmé con los testigos de asistencia. Por Alejandro Franco—Ramon Romero. Rubrica. A., Ramon Romero. Rubrica. A. Franco Gauna. Rúbrica. 15 Pregon. En el expresado presidio los trece dias del citado mes y año se dió otro pregon y no habiendo postor, se puso por diligencia que firmé con los de asistencia. Por Alejandro Franco—Ramon Romero. Rúbrica. A. Ramón Romero. Rubrica. Francisco Gauna. Rubrica. 16 Pregon. En el citado Presidio á los catorce dias del citado mes y año se dió otro pregon y no habiendo resultado postor, se puso por diligencia que firmé con los de asistencia segun derecho. Por Alejandro Franco, Ramon Romero. Rubrica. A., Ramon Romero. A., Franco. Gauna. Rubricas. 17 Pregon. En el mismo Presidio á los quince dias del mismo mes y año, se dió otro pregon, y no habiendo ocurrido postor, se puso por diligencia que firmé con los de mi asistencia. Por Alejandro Franco, Ramon Romero. Rubrica. A., Ramon Romero. Rubrica. A., Franco. Gauna. Rubricas. 18 Pregon. En el relacionado Presidio á los diez y seis dias del citado mes y año se dió otro pregon y no habiendo resultado postor se puso por diligencia que firmé con los de mi asistencia. Por Alejandro Franco, Ramon Romero. Rubrica. A., Ramon Romero. A., Franco. Gauna. Rubrica. 19 Pregon. En el citado Presidio á los diez y siete dias del citado mes y año se dió otro pregon, y no resultando postor se puso por diligencia que firmé con los de asistencia. Por Alejandro Franco, Ramon Romero. Rubrica. A., Ramon Romero.

A., Francisco Gauna. Rubricas. 2L Pregon. En el mismo Presidio á los diez y ocho dias del expresado mes y año se dió otro pregon y no habiendo resultado postor, se puso por diligencia que firmé con los de asistencia. Por Alejandro Franco, Ramon Romero. Rubrica. A., Ramon Romero. Francisco Gauna. Rubricas. 21 Pregon. En el relacionado Presidio á los diez y nueve dias del mismo mes y año se dió otro pregon, y no habiendo resultado postor, se puso por diligencia que firmé con los de asistencia segun derecho. Por Alejandro Franco, Ramon Romero. Rubrica. A., Ramon Romero. A., Franco. Gauna. Rubricas. 22 Pregon. En el expresado Presidio á los veinte dias del expresado mes y año se dió otro pregon y no habiendo postor se puso por diligencia que firme con los de asistencia segun derecho. Por Alejandro Franco, Ramon Romero. Rubrica. A., Ramon Romero. A., Francisco Gauna. Rubricas. 23 Pregon. En el mencionado Presidio á los veinte y un dias del citado mes y año, se dió otro pregon y no habiendo postor se puso por diligencia que firmé con los de asistencia. Por Alejandro Franco. Ramon Romero. Rúbrica. A. Ramon Romero. A., Francisco Gauna. Rubrica. 24 Pregon. En el mismo presidio á los veintidos dias del citado mes y año se dió otro pregon y no habiendo resultado postor se puso por diligencia que firme con los de asistencia segun derecho. Por Alejandro Franco. Ramon Romero. Rubrica. A., Ramon Romero. A., Francisco Gauna. Rubricas. 25 Pregon. En el expresado Presidio á los veintitres dias del mismo mes y año se dió otro pregon y no apareciendo postor se puso por diligencia que firmé con los de mí asistencia. Por Alejandro Franco. Ramon Romero. Rubrica. A., Ramon Romero. A., Franco. Gauna. Rubricas. 26 Pregon. En el relacionado Presidio á los veinticuatro dias del citado mes y año se dió otro pregon, y no resultando postor, se puso por diligencia que firmé con los de mí asistencia. Por Alejandro Franco. Ramon Romero. Rubrica. A., Ramon Romero. A., Francisco Gauna. Rubricas. 27 Pregon. En el citado Presidio á los veinticinco dias del citado mes y año se dió otro pregon y no habiendo ocurrido postor se puso por diligencia que firmé con los de mi asistencia. Por Alejandro Franco. Ramon Romero. Rubrica. A. Ramon Romero. A., Francisco Gauna. Rubricas. 28 Pregon. En el mismo Presidio á los veintiseis

dias del citado mes y año se dió otro pregon y no habiendo postor se puso por diligencia que firme con los de mi asistencia segun derecho. Por Alejandro Franco. Ramon Romero. A., Ramon Romero. A., Francisco Gauna. Rubricas. 29 Pregon. En el expresado Presidio á los veintisiete dias del mismo mes y año se dió otro pregon y no resultando postor, se puso por diligencia que firmé con los de mi asistencia. Por Alejandro Franco. Ramon Romero. Rubrica. A., Ramon Romero. A., Franco. Gauna. Rubricas. 30 Pregon. En el mencionado Presidio á los veintiocho dias del expresado mes y año se dió el último pregon y no habiendo resultado postor, se puso por diligencia que firmé con los de mi asistencia. Por Alejandro Franco. Ramon Romero. Rubrica. A., Ramon Romero. A., Franco. Gauna. Rubricas. En el mismo Presidio, en dicho dia, mes y año, estando concluido éste expediente, remitase al Sr. Tesorero General, con citación del interesado á fin de que trasladándose por sí ó por apoderado á la Capital de Alamos asista á las tres almonedas de los terrenos pregonados que han de verificarse en la expresada Capital. Yó el juez comisionado así lo decreté mandé y firmé con los de mi asistencia segun derecho. Por Alejandro Franco. Ramon Romero. Rubrica. A., Ramon Romero. A., Franco. Gauna. Rubricas. Yncontinente en dicho dia, mes y año siendo presente el C. Ygnacio Elias por sí y como apoderado de su hermana D. Eulalia le notifiqué é hice saber el decreto que antecede y dándose por citado lo firmo conmigo y los de mi asistencia con quienes actuo por receptoria segun derecho. Por Alejandro Franco. Ramon Romero. Rubrica. Ygnacio Elias. Rubrica. A., Ramon Romero. A., Franco. Gauna. Rubricas. *Razon.* Se remitió éste expediente con oficio fecha 30 de noviembre de 1828 al Sr. Tesorero Gral del Estado y para constancia lo rubriqué. Franco. Rubrica. Alamos, 19 de Diciebre de 1828. Pase al Promotor Fiscal de la Hacienda del Estado para que exponga su dictamen. Gaxiola. Una rubrica. Cº Tesorero General. Este expediente contiene la mensura de ocho sitios de tierra para la cria de ganado mayor y caballada practicada por el alcaldia de Sta. Cruz en los parages de San Ygnacio del Bavocómari. Nada encuentro en contrario para que dejen de adjudicarse a los pretendientes si no es que exceden del numero á que pueden concederse por el artº 21 del decreto de 20 de Mayo de 1825,

empero sí Ud está asegurado de los requisitos que expresa el 22, soy de opinion que se rematen en favor de los registrantes á menos que no aparesca otro mejor postor. Alamos, Dicbre 20 de 1828. Felipe Gil. Rubrica. Alamos 22 de Dicbre de 1828. Conformándome con el dictámen del Promotor fiscal que antecede, debia de mandar y mando se citen á los Sres vocales de la Junta de almonedas para practicar las tres ultimas y remate del terreno que expresa este expediente. Gaxiola. Rubrica. 1ª almoneda. En la ciudad Concepción de Alamos á los veintidos días del mes de Diciembre de mil ochocientos veintiocho, reunidos en Junta de almoneda el Sr. Presidente y vocales que la componen con el objeto de celebrar la primera de los terrenos á que se contrae éste expediente dispusieron que a son de tambor se convocasen algunos ciudadanos en el oficio de ésta Tesoreria y que en su presencia procediese el que funcionó de pregonero Marcelo Parra, a dar un pregon como efectivamente lo dió en altas y claras voces, diciendo: " Van á rematarse las tierras del parage nombrado San Ygnacio de Bavocómari sitas en jurisdicción del Presidio de Santa Cruz comprensiva de ocho sitios para cria de ganado mayor y caballada y ganado menor, mensuradas á favor de Don Ygnacio y Doña Eulalia Elias y avaluados en tres cientos ochenta pesos; quien quisiera hacer mejor postura, ocurra ante esta Junta donde se le admitirálo que haga. Y no habiendo ocurrido persona alguna se pone por diligencia para constancia. Faxiola. Rubrica. Almada. Rubrica. Gil. Rubrica. 2ª almoneda. En la expresada ciudad á los veintitres dias del mes de Dicbre de mil ochocientos veintiocho, convocados en Junta los Sres. Presidente y vocales que la componen con el fin de celebrar la segunda almoneda de los terrenos que expresa éste expediente mandaron se practicase en los mismos terminos que la primera antecedente, lo que se verifico añadiendo unicamente el que hizo veces de pregonero que el dia de mañana habia de quedar celebrado el remate. Y no habiendo resultado postor se pone por diligencia para constancia que firmaron los Sres. de la Junta. Gaxiola. Rubrica. Almada. Rubrica. Gil. Rubrica. 3ª almoneda. En la nominada ciudad de la Concepción a los veinticuatro dias del mismo mes y año hallandose reunidos el Sr. Presidente y vocales de la expresada Junta de almonedas, dispusieron se evacuase la tercera y remate de los terrenos que menciona este expediente lo cual se

hizo en la misma conformidad que las dos anteriores, con solo añadir el pregonero que en éste momento ha de quedar celebrado el remate. Y habiendo dado la plegaria de las doce de éste dia sin que ocurriese postor alguno, dijo por último el pregonero en alta voz "a la una, á los dos, á las tres: que se remata que se remata que se remata: que buena que buena que buena les haga a Don Ygnacio y Doña Eulalia Elias. En tales terminos se concluyó este acto quedando pública y solemnemente rematado á favor de dichos interesados los ocho sitios de tierra para cria de ganado mayor y caballada en el parage nombrado San Ygnacio del Bavocómari, jurisdiccion del Presidio de Santa Cruz, en la cantidad de Trescientos ochenta pesos en que fueron avaluados. Y para la debida constancia se pone esta diligencia que firmaron los Sres. Presidente y vocales de la Junta con el C. Capitan Ygnacio Elias como apoderado de los interesados. Gaxiola. Rubrica. Almada. Rubrica. Gil. Rubrica. Ygnacio Elias Gonzales. Rubrica. Arispe, 19 de Octubre de 1832. Habiendose verificado el entero de trescientos ochenta pesos en la Tesoreria General del Estado Unido, en que se remataron los ocho sitios de tierras comprendido en el questo nombrado San Ygnacio del Bavocómari á favor del C<sup>o</sup> Ygnacio Elias y Doña Eulalia Elias vecino el primero de la Villa de Rayon y la segunda de esta Capital, como lo comprueba la certificación que está agregada al expediente, expidase el titulo de merced en forma para su resguardo. El Tesorero Gra del Estado de Sonora así lo proveyo y firmó con testigos de asistencia segun derecho. Mendoza. Rubrica. A., Mariano Romo. Rubrica. A., Luis Caranco. Rubrica. En 25 de Diciembre de 1832 se expidió titulo de merced del terreno del Bavocómari de que trata este expediente. Mendoza. Rubrica. Nicolas Maria Gaxiola, Tesorero Gral. de las Rentas del Estado de Occidente, Certificó que al folco 3 vuelta del manual de ésta Tesoreria, del corriente año, se halla sentada con ésta fecha la partida siguiénté Cárgo en mercedes de tierra trescientos ochenta pesos que enteró el Capitan Don Ygnacio Elias á nombre de Don Ygnacio y Doña Eulalia Elias vecinos de Arispe, por la merced de ocho sitios de tierra para cria de ganado mayor y caballada en el parage nombrado San Ygnacio del Bavocómari, jurisdiccion del Presidio de Santa Cruz, avaluados en la indicada cantidad, que se remataron á su favor sin opositor alguno en Junta de almonedas celebrada en ésta Tesoreria el dia 24 de

Diciembre próximo pasado \$380. Gaxiola. Rubrica. Ygnacio Elias Gonzales. Rúbrica. Y para que conste doy la presente en Alamos á ocho de Enero de mil ochocientos veintinueve años. Nicolas Maria Gaxiola. Rubrica. Testado. C. No vale. E. L. expresado. Lorenzo Sortillon. Juan Nepomuceno, Felix. Vale.

Es copia exacta de su original que autorizo y firmo en Hermosillo á ocho do Febrero de mil ochocientos noventa y ocho.

N. AGUILAR.



**In the Supreme Court of the United States.**

OCTOBER TERM, 1897.

---

ROBERT PERRIN, APPELLANT, }  
v. } No. 30.  
THE UNITED STATES. }

---

**APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.  
BABOCÓMARI GRANT IN ARIZONA.**

---

**TRANSLATION, ON BEHALF OF THE UNITED  
STATES, OF THE "EXPEDIENTE" OF THE BABO-  
CÓMARI GRANT FILED BY APPELLANT, AND  
A MEMORANDUM OF INACCURACIES IN APPEL-  
LANT'S TRANSLATION.**

---

Counsel for appellant having filed a translation of a certified copy of the *expediente* of the San Ignacio del Babocómari grant, as found in the archives at Hermosillo, it is deemed proper to file a translation thereof on behalf of the Government and to call attention to several material inaccuracies in appellant's translation. A few

of these inaccuracies clearly indicate the danger of relying upon translations of various proceedings for the disposition of lands attempted to be taken under the laws of Spain, Mexico, or any of the States thereof, when made by translators who do not understand or observe the technical use of words and phrases as contained and defined in the various laws.

Respectfully submitted.

JOHN K. RICHARDS,  
*Solicitor-General.*

MATTHEW G. REYNOLDS,  
*Special Assistant to the Attorney-General.*

## MEMORANDUM OF INACCURACIES IN APPELLANT'S TRANSLATION.

1. On title-page the words "*sitios para cria de ganado mayor y caballada*" are not translated except by the words "live-stock ranch," placed in parenthesis. These Spanish words mean "tracts for breeding large cattle and horses," and have in the laws of Sonora a technical application comprehending a precise quantity of land authorized to be granted for such purposes.

2. The word "*expediente*" is translated "record" wherever it occurs. The "*expediente*" is only a part of the record and should be translated "*proceedings*."

The words "*sign manual*" occur 158 times in the translation for the Spanish "*rúbrica*." This latter word should be translated "*rubric*" (*Century Dict.*) or "*paraph*."

The word "*habilitado*" just preceding the petition is rendered by "*qualified*." As applied to the revival of stamped paper, it should be "*habilitated*."

The words "*suburban property*" in the petition are given as the translation of "*bienes de campo*." These words mean "*live stock*."

The word "*comprensión*" in the petition is translated "*limits*." Its correct meaning is "*jurisdiction*."

The word "*registrado*," in the petition, is translated "*recorded*." It should be "*registered*," in the sense of entering or filing upon a piece of land under the land laws.

In the decree appointing a surveyor the words "*alcalde de policia*" have been translated "*chief of police*." It should be "*police justice*." The "*alcalde*" is a judicial and administrative officer, with a chief of police under him.

In the same decree "*constituyente*" has been translated by "*constitutional*." It should be "*constituent*." The two terms are quite distinct.

In the same decree and elsewhere the word "*remate*" is translated by "*auction*." It should be "*final sale*."

"*Almonedas*" in the same decree is translated "*auctions*," whereas its correct meaning is "*offers to sell*." It occurs in the "*expediente*" a number of times and is inaccurately translated "*auctions*."

In the minute in which the surveyor accepts his appointment the word "*oficiales*" is translated "*officials*." It should be "*assistants*," as they were in no sense "*officials*," but subordinate helpers for the occasion, such as chainmen, etc.

In the same minute the words "*testigos de asistencia*" have been translated "*assistants*." They should be translated "*attending witnesses*." "*Asistencia*" does not mean "*assistants*," but the act of being present.

In the minute setting out the appointment and swearing of assistants the word "*rodmen*" is given as the translation of "*apuntadores*." It should be "*recorders*," persons who attend the surveyor and write down the field notes of the survey as it progresses.

In the survey itself the word "*viento*" is translated by "*angle*." It means "*wind*," literally, but in this place its meaning is "*course*" or "*direction*."

In the survey "*este norueste*" are translated "*east northeast*," instead of "*east northwest*."

"A monument in the shape of a cross" is given as the translation of "*mojonera cruz*." It should be "*cross monument*," i. e., a monument placed where two lines cross, without regard to the shape of the monument, in contradistinction to a "*mojonera esquina*," a "*corner monument*."

In the same place "*sesenta*," meaning "*sixty*," is translated "*seventy*."

In the survey "*cuadra*" is translated "*square*." It means being perpendicular or at right angles to.

In the designation of the courses, such as "*southeast by north-northwest*" for "*sueste para nornorueste*," the word "*para*," wherever it occurs, is translated "*by*." It should be translated "*to*," as points on the opposite side of the compass are being described.

In the survey also the word "*ultimos*" is translated "*latter*." It should be "*last few*."

In the appraisalment of the land surveyed "*por receptoria*" are translated "*through commission*." They should be translated by "*ex officio*."

In the reference to the "*promotor fiscal*," these words are translated by "*comptroller*." They mean "*fiscal attorney*," who was merely the legal adviser of the treasurer-general of the State.

In the certificate of payment for the land the word "*cargo*" is translated by "*charged*." It should be translated by "*receipts*."

**GOVERNMENT'S TRANSLATION OF CERTIFIED  
COPY OF THE EXPEDIENTE OF THE SAN YGNACIO  
DEL BABOCÓMARI GRANT FILED BY APPEL-  
LANTS.**

[TITLE PAGE.]

Copy of the proceedings and steps taken in the survey of eight *sitios* for breeding large cattle and horses at places called "San Ignacio del Babocómari," in behalf of citizen Ignacio Elias and Doña Eulalia Elias.

(Seal reading: Office of the treasurer-general, State of Sonora, February 8, 1898.)

(A fifty-cent stamp duly cancelled).

Citizen Treasurer-General:

I, Ignacio Bonillas, a resident of Nogales, and temporarily in this capital, appear before you and state: That, as appears by the letter which I annex in the original, Mr. Robert Perrin, owner of the land known as "San Ignacio del Babocómari," situate in the Territory of Arizona, United States of the North, needs a certified copy of the proceedings relating to said land existing in the archives of the treasury under your worthy charge, and said Mr. Perrin having authorized me to ask for said copy in his name, I pray you to be pleased to order that the corresponding copy be issued to me for the purposes that may suit the party in interest. I make the necessary protestations.

Hermosillo, February 5, 1898.

IGNACIO BONILLAS. [Rubric.]

Received on the seventh instant, and, as asked for, let the copy requested be issued.

V. AGUILAR. [Rubric.]

Stamp third. 2 reals. Years 1822 and 1823. Habilitated. The constitution sworn to by the King on March 9, 1820. Habilitated by the State of the Occident for the years 1827 and 1828.

A stamp which reads: "Habilitated by the Republic of Mexico for the years 1824 and 1825."

Mr. Treasurer-General :

Don Ignacio Elias and Doña Eulalia Elias appear before your lordship in due form and say : That, needing land for live stock, they denounce, in company with Don Rafael Elias, Captain Don Ignacio Elias, and Don Nepomuceno Felix, the public land bounded by the ranch of San Pedro, in the jurisdiction of Santa Cruz, as far as the place of Tres Alamos, binding ourselves to pay to the nation the fees corresponding to it, together with whatever else that may be just, until we acquire title by grant and confirmation, to which end you will be pleased to hold said public land as registered and denounced. Therefore, we pray you to be pleased to order done as we request, by which we shall receive grace.

Arispe, March 12, 1827.

By consent and request of Don Ignacio Elias.

JOAQUIN ELIAS. [Rubric.]

EULALIA ELIAS. [Rubric.]



COSALA, July 1, 1827.

The police justice of Santa Cruz will proceed, by authority which is conferred on him therefor, without prejudice to a third party who represents a better right, and after citation of coterminous owners, to the survey, valuation, and publication, for thirty consecutive days, of the lands mentioned in the foregoing denouncement, following in everything the sovereign decree of the honorable constituent congress of the State, No. 30, of May 20, 1825, and the regulations accompanying it, and, when these proceedings have been carried out, he will forward them to this office of the treasurer, summoning the bidders that appear to present themselves in person or by attorney at the final sale that must be held in said office after the customary three public offers of sale.

The treasurer-general of the State, Nicolas Maria Gaxiola, thus decreed and signed it.

GAXIOLA. [Rubric].

At the presidio of Santa Cruz, and on the fifth day of the month of October, of eighteen hundred and twenty-eight.

In view of the foregoing decree of the treasurer-general, let the provisions of said decree dated July 1, 1827, be complied with, and to that end, upon citation of the parties in interest, coterminous owners, expert surveyor, and other necessary assistants, who must be appointed, go myself to the *hacienda* of San Pedro for the purpose of proceeding to the survey of the *sitios* the parties in interest desire. Citizen Alexandro Franco, constitutional *alcalde* of the presidio of Santa Cruz, by

this decree so ordered and signed it, with attending witnesses, with whom he acts *ex officio* in default of a notary according to law.

For Alejandro Franco :

RAMON ROMERO.

Attending witness :

RAMON ROMERO.

Attending witness :

FRANCISCO GAUNA.

At the *hacienda* of San Pedro, and on the eighteenth day of the month of October of eighteen hundred and twenty-eight, I, said judge, there being present citizen Ignacio Elias, for himself and as attorney for his sister Doña Eulalia, the coterminous owners, citizen Captain Ignacio Elias and Nepomuceno Felix, the expert surveyor, lieutenant-colonel of engineers, citizen José Maria Caballero, to whom I gave notice of and made known the foregoing decree, which they understood, and after they accepted the summons and the appointments the twentieth day of said month was designated for going to proceed to the survey, which they signed with me and those in my attendance in the usual manner.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

IGNACIO ELIAS. [Rubric.]

JUAN NEPOMUCENO FELIX. [Rubric.]

JOSÉ DE CABALLERO. [Rubric.]

Attending witness :

RAMON ROMERO. [Rubric.]

Attending witness :

FRANCISCO GAUNA. [Rubric.]

Having arrived at the place called San Ignacio de Babocómari, the twentieth day of said month and year, as the point where the surveys of citizens Captain Ignacio Elias Gonzalez and Nepomuceno Felix end—on the course east northwest by west southwest—accompanied by the party in interest, the expert surveyor, the assistants who are to be appointed, and attending witnesses, I ordered that before beginning the survey an inspection or ocular examination be made of the lands which were about to be surveyed on petition of citizen Ignacio Elias and his principal Doña Eulalia, and after they were well reconnoitered I found them to be places ample for raising large and small stock, the greater part of them having water flowing from permanent springs, with only the drawback of being very dangerous as the hiding places of the hostile Apache. And in witness thereof I enter it as a minute, which I signed with those in my attendance, with whom I act.

For Alejandro Franco:

RAMON ROMERO.	[Rubric.]
IGNACIO ELIAS.	[Rubric.]
JUAN NEPOMUCENO FELIX.	[Rubric.]
IGNACIO ELIAS GONZALEZ.	[Rubric.]
JOSÉ DE CABALLERO.	[Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

On the same day, month, and year, I, the judge, commissioned for the purpose of proceeding to the survey

of the land denounced, on a bald hillock in front of the small marsh of San Ignacio de Babocómari, appointed citizen Lorenzo Sortillon as tallyman, citizens Andres Mendoza and Pablo Elias as chainmen, citizens Antonio Campoy and Mauricio Neira as recorders, and, together with the expert surveyor, citizen Lieutenant-Colonel José Maria Caballero, they accepted said appointments, each for himself, and in the proper manner taking the customary oath to faithfully and lawfully discharge the duty assigned to each, without fraud or deception, and each acting according to his best intelligence and understanding; and those who knew how signed it with me and those in my attendance in the usual manner, to which I certify.

For Alejandro Franco:

RAMON ROMERO.	[Rubric.]
LORENZO SORTILLON.	[Rubric.]
PABLO ELIAS.	[Rubric.]

For Andres Montoya, for Antonio Campoy, and Mauricio Neira:

FRANCISCO GAUNA.	[Rubric.]
------------------	-----------

Attending witness:

RAMON ROMERO.	[Rubric.]
---------------	-----------

Attending witness:

FRANCISCO GAUNA.	[Rubric.]
------------------	-----------

At said place, and on the same day, month, and year, in order to proceed to the survey, there being present the parties in interest, the assistants appointed, and the attending witnesses, I ordered that a cord of fifty *varas* be measured, and, its extremities being tied to two poles,

said survey was proceeded with by the expert surveyor, citizen José M. Caballero, who, setting up his compass, took the course east-northwest quarter east by west-southwest quarter west, where I caused a cross monument to be placed, and from said place, through said point, there were measured and counted one hundred cords, which terminated in a small valley in the neighborhood of some bald hillocks, where I caused a monument to be placed; and, as it was then late, I had the cord taken up, and the assistants and others withdrew to rest till the following day, when the survey would be continued, which I enter as a minute and sign, with those in my attendance and other parties in interest who accompanied me, to which I certify:

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

IGNACIO ELIAS. [Rubric.]

JUAN NEPOMUCENO FELIX. [Rubric.]

IGNACIO ELIAS GONZALEZ. [Rubric.]

LORENZO SORTILLON. [Rubric.]

JOSÉ DE CABALLERO. [Rubric.]

For Antonio Campoy and Mauricio Neira:

FRANCISCO GAUNA. [Rubric.]

For Andres Montoya and for myself:

PABLO ELIAS. [Rubric.]

Attending witness:

RAMON ROMERO.

Attending witness:

FRANCISCO GAUNA. [Rubric.]

At the place where I ordered the second monument put, called the valley of San Ignacio de Babocómari, and accompanied by the party in interest, the expert sur-

veyor, the assistants appointed, in order to continue the survey on the same course, and on the twenty-first day of said month and year, I caused the cord of fifty usual varas to be examined again, and after it was examined and its extremities tied to two poles and the cord extended, there were measured and counted on the same course two hundred and forty-three cords, which terminated on top of a hillock, which faces toward the south-southwest wind, where the survey was suspended because of the broken character of the country, the many and deep gulches that lay in the direction of this survey, for which reason it was necessary for me and the expert surveyor to make an estimate of fifty-seven cords more for the completion of the side of three *sitios* for large stock, this estimate terminating at the hot spring facing the Santa Rita Mountains at the foot of a bald hill, where I ordered placed a corner monument, which faces the slope of said mountain and said hot spring, and from said point, because of the continuance of the broken character of the ground and the deep gulches, in order to form the end line of these *sitios* at right angles to the survey already described on said course, I and the expert surveyor estimated, on the course northwest quarter north-northwest to southeast quarter south-southwest, sixty cords to the foot of a small cottonwood tree, which is in a small valley at the foot of said Santa Rita Mountains, and for the completion of the end or perpendicular line on the opposite course, south-southwest quarter south-east to north-northwest quarter northwest, the other forty cords were estimated, and terminated on a hillock, where there were several oaks, where I ordered the correspond-

ing monuments placed, by which, with these three *sitios* for large cattle and that surveyed the day before, four *sitios* were completed; and, as it was past midday, I ordered that we withdraw to the center monument, which we did. Having reached said monument in front of the marsh of San Ignacio del Babocómari, having had the cord of fifty varas again examined and its extremities tied to the said two poles, the cord being extended on the course west southeast to east northwest, there were measured and counted seventy-four cords, which terminated on top of some hillocks in the vicinity of the end of the water, where, because of being already night, the survey of this day is concluded, all of us withdrawing in order to rest, which I enter as a minute, signing it, together with the party in interest, the expert surveyor, the assistants appointed, and the attending witnesses, to which I certify.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

IGNACIO ELIAS. [Rubric.]

JUAN NEPOMUCENO FELIX. [Rubric.]

LORENZO SORTILLON. [Rubric.]

For Andres Montoya and for myself :

PABLO ELIAS. [Rubric.]

For Antonio Campoy and Mauricio Neira :

FRANCISCO GAUNA. [Rubric.]

IGNACIO ELIAS GONZALES. [Rubric.]

JOSÉ DE CABALLERO. [Rubric.]

Attending witness :

RAMON ROMERO.

Attending witness :

FRANCISCO GAUNA. [Rubric.]



At said place, and on the twenty-second day of said month and year, I, the judge commissioned, the party in interest, the expert surveyor, and other assistants appointed, having caused the cord of fifty *varas* to be examined and the course of the preceding day, the cord being extended on this same course, there were measured and counted twenty-six cords, for the completion of the hundred cords for the side of one *sitio* for large cattle, and on the same course, passing the cord over the tops of several hillocks and gulches, there were measured and counted three hundred cords, the last ones passing through a valley in the vicinity of the tanks from the spring, and these latter terminating above said tanks on a rocky hillock, where I ordered a corner monument placed, with which was completed the side of the other four *sitios* for large stock, where, the compass being set up by the expert surveyor, the cord being placed perpendicularly (*en cuadro*) and forming a right angle or angle of ninety degrees with the preceding course, the cord examined and extended on the course, south-southwest quarter southeast to north-northwest quarter northwest, there were measured and counted forty cords corresponding to those of the preceding end line of the other four *sitios*, these latter terminating on top of some bald hillocks, where I ordered a corner monument placed, and returning to the center of the measurement of this end line, on the opposite course, north-northwest quarter northwest to south-southwest quarter southeast, there were measured and counted sixty cords for the completion of the hundred cords, these latter terminating on the top of a very high hill, with which

the survey was concluded, making the total of eight *sitios* for large stock registered by citizen Ignacio Elias and his sister, Doña Eulalia, and he accepted and was satisfied with said survey, being cautioned to opportunely mark his boundaries with monuments of lime and stone, as is provided. And in witness thereof he signed it with me and all those who knew how with those in my attendance with whom I act *ex officio*, in default of a notary, according to law.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

IGNACIO ELIAS. [Rubric.]

LORENZO SORTILLON. [Rubric.]

For Andres Montoya and for myself :

PABLO ELIAS. [Rubric.]

JUAN NEPOMUCENO FELIX. [Rubric.]

For Antonio Campoy and Mauricio Neira :

FRANCISCO GAUNA. [Rubric.]

IGNACIO ELIAS GONZALES. [Rubric.]

JOSÉ DE CABALLERO. [Rubric.]

Attending witness :

RAMON ROMERO.

Attending witness :

FRANCISCO GAUNA. [Rubric.]

At the estate of San Pedro, and on October 24, 1828, I, the judge commissioner, in order to proceed to the appraisement and valuation of the lands surveyed in favor of said citizen Ignacio Elias and his sister, Doña Eulalia, comprised of eight *sitios* for cattle between both of them, saw fit to appoint as such appraisers, because I knew they possessed the necessary information, citizens

Pablo Elias and Ramon Romero, residents of the presidio of Santa Cruz, who were present at the survey; and having made said appointment known to them, they accepted it and swore in the manner corresponding to each, promising to make the appraisement without deception, fraud, or collusion; and in virtue thereof, they said together, and in accordance with the examination they had made, and knowing the orders that govern in the matter, that the value of sixty dollars should be given, and they give it to each one of *six sitios* for cattle, because they have permanent water; and to the other remaining two, for the completion of the eight *sitios* for cattle, *ten* dollars each, because they are absolutely without water, with which the total value of the eight *sitios* for cattle amounts to \$380; and having read this declaration to the appraisers, they ratified and signed it with me and those in my attendance with whom I act *ex officio* according to law.

For Alejandro Franco:

	RAMON ROMERO.	[Rubric.]
	PABLO ELIAS.	[Rubric.]
	RAMON ROMERO.	[Rubric.]
Attendance:	RAMON ROMERO.	[Rubric.]
Attendance:	FRANCISCO GAUNA.	[Rubric.]

At the presidio of Santa Cruz on the 29th of said month and year, I, said judge-commissioner, having returned to this presidio and in view of the foregoing proceedings and appraisement of the lands granted to citizen Ignacio Elias and his sister, Doña Eulalia, composed of eight sitios for large and small stock, ordered that they be published for thirty consecutive days, counted from

to-morrow, as provided by law. Thus the judge-commissioner provided and signed, with attending witnesses, to which I certify.

For Alexandro Franco:

RAMON ROMERO. [Rubric.]

Attendance:

RAMON ROMERO. [Rubric.]

Attendance:

FRANCISCO GAUNA. [Rubric.]

*1st publication.* At said place and on the 30th day of the month of October of said year, I, said judge of said presidio, caused various individuals to be called together, at the sound of the drum, in the public (*plaza*) square of said presidio and the public crier, Gregorio Gallegos, to say, in a loud and clear voice in the presence of all of them: The lands of the place called San Ignacio del Babocómari situated in this jurisdiction and comprising 8 sitios for breeding large and small stock in favor of citizen Ignacio Elias and his sister, Doña Eulalia, appraised in the sum of \$380 are sold on account of the nation; whoever desires to make a bid, that he shall make will be admitted upon applying to me. And no bidder having appeared, this minute was entered, which I signed, with those of my attendance.

For Alexandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*2nd publication.* At said presidio, on the thirty-first day of said year and month, another publication was

made similar in all respects to the foregoing, and no bidder having appeared, I entered it as a minute, which I sign, with those in my attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*3rd publication.* At said presidio, on the first of November of one thousand eight hundred and twenty-eight, another publication was made, and no bidders having appeared, it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*4th publication.* At said presidio, on the second day of the month and year aforesaid, another publication was made, and no bidder appearing, this minute was entered, which I signed, with those in my attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*5th publication.* At said presidio, on the third day of said month and year, another publication was made, and no bidder having resulted it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

Attending witness :

RAMON ROMERO. [Rubric.]

Attending witness :

FRANCISCO GAUNA. [Rubric.]

*6th publication.* At said presidio, on the 4th day of said month and year, another publication was made, and no bidder having appeared I entered this minute, which I signed, with those in attendance.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

Attending witness :

RAMON ROMERO. [Rubric.]

Attending witness :

FRANCISCO GAUNA. [Rubric.]

*7th publication.* At said presidio, on the 5th day of said month and year, another publication was made, and there being no bidder it was entered as a minute, which I signed, with those in my attendance.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

Attending witness :

RAMON ROMERO. [Rubric.]

Attending witness :

FRANCISCO GAUNA. [Rubric.]

*8th publication.* At said presidio, on the 6th day of said month and year, another publication was made, and no bidder having appeared it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*9th publication.* At said presidio, on the seventh day of said month and year, another publication was made, and no bidder having appeared it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*10th publication.* At said presidio, on the eighth day of the current month and year, another publication was made, and no bidder having resulted it was entered as a minute, which I signed, with those of my attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]



*11th publication.* At said presidio, on the ninth day of said month and year, another publication was made, and no bidder having appeared it was entered as a minute, which I signed, with those in my attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*12th publication.* At said presidio, on the tenth day of said month and year, another publication was made, and no bidders having resulted it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*13th publication.* At said presidio, on the eleventh day of said month and year, another publication was made, and no bidder having resulted it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*14th publication.* At said presidio, on the twelfth day of said month and year, another publication was made, and no bidder having appeared it was entered as a minute, which I signed, with the attending witnesses.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*15th publication.* At said presidio, on the thirteenth day of said month and year, another publication was made, and there being no bidder it was entered as a minute, which I signed, with those in attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*16th publication.* At said presidio, on the fourteenth day of said month and year, another publication was made, and no bidder having resulted it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*17th publication.* At said presidio, on the fifteenth day of said month and year, another publication was made, and no bidder having appeared it was entered as a minute, which I signed, with those in my attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*18th publication.* At said presidio, on the sixteenth day of said month and year, another publication was made, and no bidder having resulted it was entered as a minute, which I signed, with those in my attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*19th publication.* At said presidio, on the seventeenth day of said month and year, another publication was made, and no bidder resulting it was entered as a minute, which I signed, with those in attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*20th publication.* At said presidio, on the eighteenth day of said month and year, another publication was

made, and no bidder having resulted it was entered as a minute, which I signed, with those in attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*21st publication.* At said presidio, on the nineteenth day of said month and year, another publication was made, and no bidder having resulted it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*22d publication.* At said presidio, on the twentieth day of said month and year, another publication was made, and there being no bidder, it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO.

Attending witness:

RAMON ROMERO.

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*23d publication.* At said presidio, on the twenty-first day of said month and year, another publication was made, and there being no bidders, it was entered as a minute, which I signed, with those in attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO.

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*24th publication.* At said presidio, on the twenty-second day of said month and year, another publication was made, and no bidder having resulted, it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO.

Attending witness:

FRANCISCO GAUNA. [Rubrics.]

*25th publication.* At said presidio, on the twenty-third day of said month and year, another publication was made, and no bidder appearing, it was entered as a minute, which I signed, with those in my attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO.

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*26th publication.* At said presidio, on the twenty-fourth day of said month and year, another publication was made, and no bidder resulting, it was entered as a minute, which I signed, with those in my attendance.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

Attending witness :

RAMON ROMERO.

Attending witness :

FRANCISCO GAUNA. [Rubric.]

*27th publication.* At said presidio, on the twenty-fifth day of said month and year, another publication was made, and no bidder having appeared, it was entered as a minute, which I signed with those in my attendance.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

Attending witness :

RAMON ROMERO.

Attending witness :

FRANCISCO GAUNA. [Rubric.]

*28th publication.* At said presidio, on the twenty-sixth day of said month and year, another publication was made, and there being no bidder, it was entered as a minute, which I signed, with those in my attendance, according to law.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

Attending witness :

RAMON ROMERO.

Attending witness :

FRANCISCO GAUNA. [Rubric.]

*29th publication.* At said presidio, on the twenty-seventh day of said month and year, another publication was made, and no bidder resulting it was entered as a minute which I signed, with those in my attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO.

Attending witness:

FRANCISCO GAUNA. [Rubrics].

*30th publication.* At said presidio, on the twenty-eighth day of said month and year, the last publication was made, and no bidder having resulted it was entered as a minute which I signed, with those in my attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO.

Attending witness:

FRANCISCO GAUNA. [Rubrics].

At said presidio, on said day, month, and year, these proceedings being concluded, forward them to the treasurer-general, upon citation of the party in interest, to the end that, going in person or by attorney to the capital at Alamos, he may be present at the three offers of sale of the lands published which are to be made at said capital. I, the judge commissioned, so decreed, ordered



and signed it, with those in my attendance according to law.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

Attending witness :

RAMON ROMERO.

Attending witness :

FRANCISCO GAUNA. [Rubrics.]

Thereupon, on said day, month, and year, citizen Ignacio Elias being present for himself and as the attorney of his sister, Doña Eulalia, I gave him notice of and made known to him the foregoing decree, and, after acknowledging service thereof, he signed it with me and those in my attendance with whom I act *ex officio* according to law.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

IGNACIO ELIAS. [Rubric.]

Attending witness :

RAMON ROMERO.

Attending witness :

FRANCISCO GAUNA. [Rubrics.]

*Note.*—These proceedings were forwarded with an official communication dated November 30, 1828, to the treasurer-general of the state, and in witness thereof, I attached my rubric thereto.

GAXIOLA. [Rubric.]

Citizen treasurer-general :

These proceedings contain the survey of eight *sitios* of land for breeding large stock and horses, made by the

justice of Santa Cruz, in the places of San Ignacio del Bavocómari. I find nothing by way of objection to allowing them to be adjudicated to the applicants, unless it is that they are in excess of the number that can be granted by article 21 of the decree of May 20, 1825; nevertheless, if you are satisfied as to the requirements presented in the 22nd, I am of opinion that they may be sold in favor of the petitioners, unless another higher bidder appears.

Alamos, December 20, 1828.

FELIPE GIL. [Rubric.]

ALAMOS, *December 22, 1828.*

Concurring in the opinion of the fiscal attorney, it was my duty to order, and I do order, that the members of the board of sales be summoned for the purpose of making the last three offers and final sale of the land described in these proceedings.

GAXIOLA. [Rubric].

*1st offer.* In the city of Concepción de Alamos, on the twenty-second day of the month of December, of eighteen hundred and twenty-eight, the president and members that compose the board of sales having assembled for the purpose of making the first offer of the lands to which these proceedings refer, they ordered that various citizens be called together, at the sound of the drum, in the office of this treasury, and that, in their presence, Marcelo Parra, who acted as crier, proceed to make a publication, as he in fact did, in a loud and clear voice, saying: "The lands at the place called San Ignacio del Babocómari, situate in the jurisdiction of the presidio of

Santa Cruz, comprising eight *sítios* for breeding large stock and horses and small stock, surveyed in behalf of Don Ignacio Elias and Doña Eulalia Elias, and appraised at three hundred and eighty dollars. Whoever desires to make a higher bid, let him come before this board, where the bid he makes will be admitted." And no person whatever having appeared, it was entered as a minute in testimony thereof.

GAXIOLA. [Rubric.]

ALMADA. [Rubric.]

GIL. [Rubric.]

*2nd offer.* In said city, on the twenty-third day of the month of December of eighteen hundred and twenty-eight, the president and members that compose the board having assembled for the purpose of making the second offer of the lands set out in these proceedings, they ordered that it be made in the same terms as the first one preceding, which was done, he who acted as crier adding merely that on to-morrow the final sale would be made. And no bidder having appeared, it was entered as a minute in witness thereof, which the members of the board signed.

GAXIOLA. [Rubric.]

ALMADA. [Rubric.]

GIL. [Rubric.]

*3rd offer.* In said city of Concepción, on the twenty-fourth day of said month and year, the president and members of said board of sales having assembled, they ordered that the third offer and final sale of the lands mentioned in these proceedings be made, which was done

in the same manner as at the two former offers, the crier adding only that at this moment the final sale is to be made. And the hour for noonday prayer of this day having been sounded without any bidder appearing, the crier announced finally in a loud voice: "One, two, three. Let it be sold, sold, sold. May it do good, good, good to Don Ignacio Elias and Doña Eulalia Elias." In these terms this act was concluded, the eight *sitios* of land for breeding large stock and horses at the place called San Ignacio del Babocómari, jurisdiction of the Presidio of Santa Cruz, being publicly and solemnly sold in favor of said parties in interest, for the sum of three hundred and eighty dollars, at which they were appraised.

And in due witness thereof this minute is entered, which the president and members of the board signed, with Captain Ignacio Elias as attorney of the parties in interest.

GAXIOLA.	[Rubric.]
ALMADA.	[Rubric.]
GIL.	[Rubric.]
IGNACIO ELIAS GONZALES.	[Rubric.]

ARISPE, *October 19, 1832.*

The payment of three hundred and eighty dollars, at which were sold the eight *sitios* of land comprised in the place called San Ignacio del Babocómari in behalf of citizen Ignacio Elias and Doña Eulalia Elias, the first a resident of the town of Rayon and the second of this capital, having been made into the office of the treasurer-general of the united State, as shown by the certificate

aggregated to these proceedings, let formal title to the grant be issued for their security. The treasurer-general of the State of Sonora so ordered and signed it, with attending witnesses, according to law.

MENDOZA. [Rubric.]

Attending witness :

MARIANO ROMO. [Rubric.]

Attending witness :

LUIS CARRANCO. [Rubric.]

On the twenty-fifth of December, 1832, title was issued to the grant of land of Babocómari, to which these proceedings refer.

MENDOZA. [Rubric.]

I, Nicolas Maria Gaxiola, treasurer-general of the revenues of the State of the Occident,

Certify that, at leaf 3, reverse, of the manual of this treasury for the current year, there is entered under this date the following entry:

Receipts for grants of lands, three hundred and eighty dollars paid by Captain Don Ignacio Elias in the name of Don Ignacio Elias and Doña Eulalia Elias, residents of Arispe, for the grant of eight *sitios* of land for breeding large stock and horses at the place called San Ignacio de Babocómari, jurisdiction of the presidio of Santa Cruz, appraised at said sum, which were sold in their favor without any opposition by the board of sales held in this office of the treasurer on the twenty-fourth day of last December. \$380.

GAXIOLA. [Rubric.]

IGNACIO ELIAS GONZALES. [Rubric.]

And in witness thereof I give these presents in Alamos, on the eighth of January, eighteen hundred and twenty-nine.

NICOLAS MARIA GAXIOLA. [Rubric.]

Crossed out—C—of no value—between lines—said, Lorenzo Sortillon, Juan Nepomuceno Felix—good.

It is an exact copy of its original, which I authenticate and sign in Hermosillo on the eighth of February, eighteen hundred and ninety-eight.

V. AGUILAR.





*Sup. Ct. of the U. S.*  
*Filed Oct. 28, 1895.*

---

Supreme Court of the United States.

OCTOBER TERM, 1895.

---

No. 480.

---

ROBERT PERRIN vs. THE UNITED STATES ET AL.

---

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

---

Argument of John T. Morgan, Attorney for Appellant.

---

JUDG & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE  
**Supreme Court of the United States.**

**OCTOBER TERM, 1895.**

---

*No. 480.*

---

ROBERT PERRIN *vs.* THE UNITED STATES ET AL.

---

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

---

**Argument of John T. Morgan, Attorney for Appellant.**

---

The history of this and other land grants made in the first days of the Republic of Mexico, in the desert lands of Sonora, along the northern frontier, discloses the public reasons and explains the policy in which they originated and the necessity that gave origin to them, and they illustrate the character of the legal proceedings by which these grants were established and the records of them were made and preserved.

I. In Mexico there is no system of general public-land surveys. There are laws of a directory nature defining the legal subdivisions of lands and their measurement, but none for locating them on the surface of the country, except as each tract passes into private ownership.

In Mexico there is no statute of frauds. Lands are conveyed by contract or gift, with or without writing, as the people choose.

Hall's Mexican Law, § 1555.

There were no books of registration of land titles in 1827 to 1836 or at a later period, such as are provided by our laws. Titles were written upon sheets of paper, as each act constituting them was performed and certified, and at the close of the proceeding these original papers were fastened together in a title roll, placed in the archives, and a copy was given to the grantee. None of these were transcribed in books of registry. Memoranda of each grant were kept in a book called *Toma de Razon*, which was intended for the use of the public officers to inform them as to the lands that had already been granted.

II. On the 12th March, 1827, Ignacio Elias, Juan Elias, curate of Arispe; his sister, Doña Eulalia Elias, Don Rafael Elias, Captain Ignacio Elias, and Don Nepamucena Elias, kinsmen and members of a wealthy and distinguished family, determined to avail themselves, under the laws of Sonora, of a region that was watered by the San Pedro river and its tributaries (of which the Babacomari creek was one) for raising cattle and horses. They united in denouncing a large area of land through which these waters ran as being vacant and open to the claim which they then formally made, addressed to the treasurer general of Sonora. This tract is in the jurisdiction of the presidio of Santa Cruz, adjoining the rancho of San Pedro, and extended as far as the place of Tres Almos.

Based upon this denunciation, each of the claimants presented a separate claim to the particular tract in this larger area which he desired to purchase, Ignacio and Eulalia Elias uniting in one petition and offer of purchase. Don Rafael Elias, on the 12th March, 1827, petitioned for the

tract called "San Rafael del Valle," within said larger area, and it was granted to him. That grant is the same that is now before the Supreme Court in the appeal of Juan Pedro Camou against the United States. Ignacio and Eulalia Elias petitioned for the place called "Ignacio del Babacomari." Other grants were made at or about the same period in that vicinity.

These ranchos were the first industrial barriers that were formed by civilized men between the Apaches, Yumas, and other savage Indians of the north and the southern and civilized settlements in the central and southern parts of Sonora. They were very hazardous and expensive adventures, but they were conducted by men of ability, courage, and character, and, with alternations of success and defeat, attended with frequent combats, they held the country against the Indians, and made it productive in raising large herds of horses and cattle for many years.

The settlements at Yuma and Tucson, Arizona, were made possible chiefly by the courage, enterprise and means of the gentlemen who first occupied the ranchos of San Pedro, Babacomari, San Rafael del Valle, and Los Nogales de Elias; all of which are referred to in the several cases now before the Supreme Court of the United States and, as to all except the rancho San Pedro, the legal and other history is given in the respective records.

An examination of the record in the cases pending in the Supreme Court, in which the grant was confirmed by the court below, will disclose the state of hostility of the Indians along the Gila and Colorado rivers in January, 1838, ten years after Elias obtained the Babacomari grant. The survey of five square leagues of land, in one case, was made *in a part of one day* by men on horseback, who "measured and counted 300 cords—three leagues, a little more or less, allowing for the irregularities from making measurements on horseback." This loose estimation or guess as to the quantity of land included in the grant was "on account of

the great danger from savages," which is mentioned several times, in a hysterical way, in the official report of the survey.

This grant was as valuable for agricultural purposes as any land in Arizona, which gives it very great market value as compared with other lands in that region. *This survey was approved, and the title was adjudicated to Rodrigues.* The court below sustained the grant thus loosely and imperfectly designated in the survey, which was excused, and yet confirmed, because the Indians in that country were dangerous, although none were seen by the surveying party. That decision sustains a "legitimate title," such as the treaties compel us to "acknowledge" and "preserve the legal value which they may possess," because such grants were necessary factors in the work of using and civilizing those desert regions in Mexico. Keeping this wise national policy in view, the questions presented in these cases are quite easy to solve.

III. On pages 64 and 65 of the record in Coe's case Juan A. Robinson testifies that the hostile Indians at the time the grant was made to Fernando Rodrigues (in 1838) were constantly on the warpath, and the Yumas and the Apaches were making it quite impossible for white people, except with a heavy escort of troops, to remain for any time in that vicinity. Various attempts were made by the proprietors, but they were invariably driven back, and several times with the loss of life.

In the answer to the 4th cross-interrogatory the witness proves, by the statements of Rodrigues, that he never succeeded in establishing the actual occupation of these lands, at least before 1847.

In Ainsa's case (Record, pp. 55, 56) Mr. Kitchen proves the depredations of the Indians as far south as the Nogales rancho as late as 1855-'7.

Jesus Nunez testified in Perrin's case in 1894: He was

born in 1841. In 1854-'5 he was at the ranch of Babacomari. Elias had large numbers of stock on the ranch. They had houses on the ranch where the major domo lived. The Indians were on the warpath and remained hostile until the witness was an old man. The owners abandoned the ranch for some time, but when they had cattle to deliver they went back again.

Lonjino Castro, whose father was major domo for Elias, proves the occupation, with cattle, &c., for a series of years.

The testimony of Josea Rodrigues (pp. 23 to 26) is clear and strong to prove continued occupation by the Eliases.

Francisco S. Leon was sixty years of age when he was examined by Mr. Wasson, surveyor general, in 1879. His testimony is not in the least contradicted by any witness or fact in the case. His testimony gives a true and concise statement of the possession of Babacomari by Elias for many years as follows:

"Ques. 4. How long have you known said rancho?"

"Ans. For more than thirty years. I have traveled over it a great many times.

"Ques. 5. Do you know its boundaries?"

"Ans. I do not, but I know that it is situated on Babacomari creek.

"Ques. 6. What do you know about the possession of said rancho?"

"Ans. I know that Don Ignacio Elias had possession of said rancho in early times, and that he had much stock thereon.

"Ques. 7. Do you know when the possession of said rancho was abandoned by Don Ignacio Elias, the grantee?"

"Ans. I cannot remember the date, but it was many years ago. It was before the time of the war with the United States.

"Ques. 8. What was the cause of said abandonment?"

"Ans. It was abandoned on account of the Apache Indians, who burnt the ranch-house, killing the people and driving off the stock.

"Ques. 9. Do you think that Elias could with safety to himself and stock have occupied the rancho at any time

previous to that at which the Indians were suppressed by the American troops?

"Ans. It would have been impossible, and I know that within a few years depredations have been committed by the Indians near this rancho."

The deposition of Santiago Espinosa, who knew the rancho of Babacomari for thirty-five years, and was 77 years old when he testified in 1879, is to the same effect.

Record, p. 83.

In 1841, and by a codicil in 1859, Juan Elias Gonzales, curate of Arispe, devised an interest in this rancho to charitable uses and to his sister Eulalia and others, showing the continued claim of the Eliases to this grant after they had been driven out by the Indians. (See his will.)

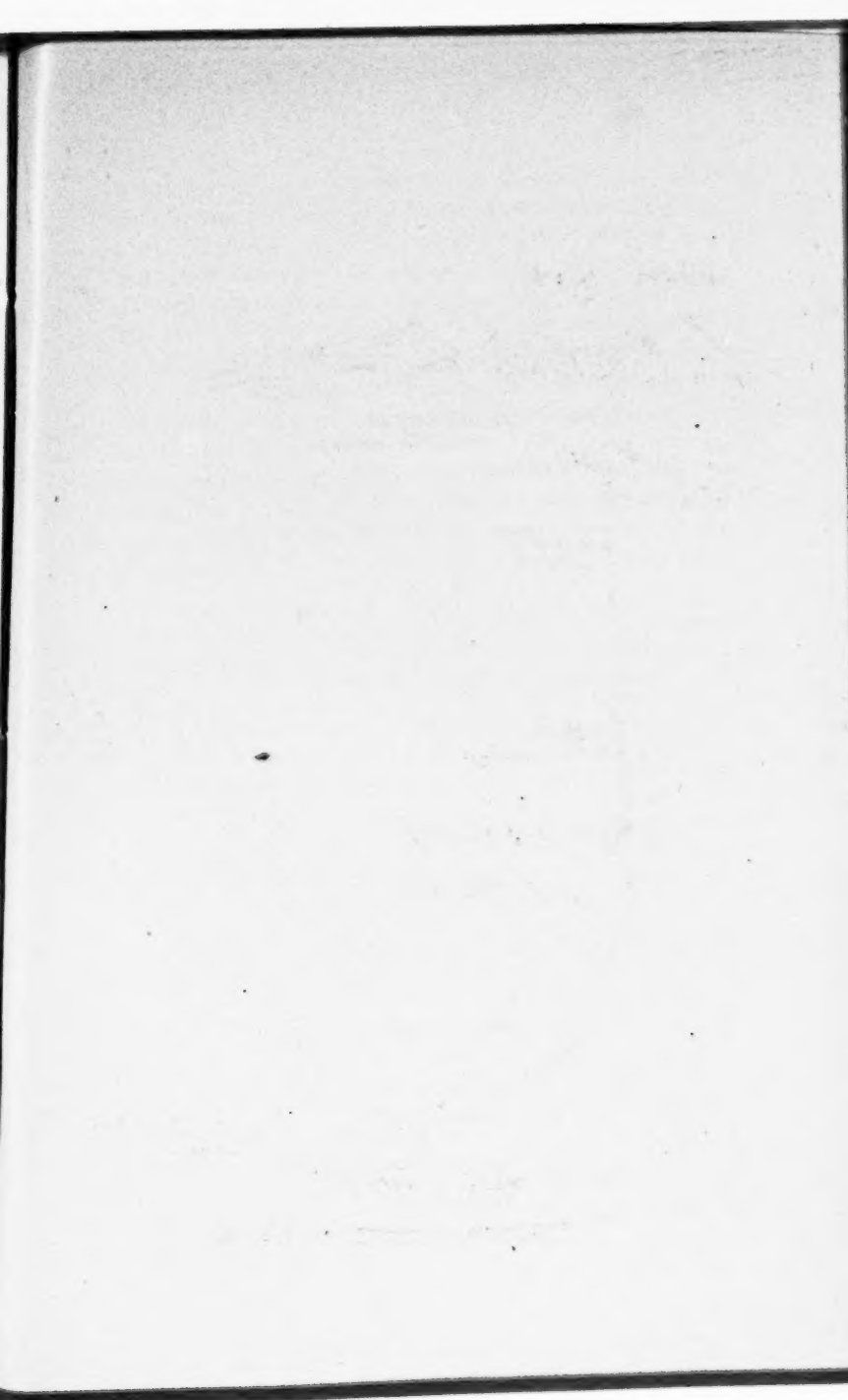
The chain of title from Ignacio and Eulalia Elias down to Robert Perrin is complete, all the conveyances being copied in the record.

These statements of the leading facts concerning the nature and *res gestæ* of the sale of these lands to Ignacio and Eulalia Elias present the question of the right of the State of Sonora to sell and convey to them a title—a "legitimate claim"—to these lands which the American tribunals are in duty bound to allow and establish under the treaties of cession made with Mexico. This question will be discussed later on.

IV. Whether the grant is sufficiently certain as to its location and area to enable the Court to decree its specific execution is a question that depends for its solution upon the state of the law and the practice under it in Mexico at the time the grant was completed.

Mr. R. C. Hopkins, of San Francisco, in a letter to the counsel for the appellant in this case, answering some inquiries made to him, gives the following explanations of the Mexican laws and practice in surveying and selling vacant





~~Plat.~~ XIX.



Hot Spring  
Cottonwood in little valley  
Hill with oak

Summit of Hill

Valley to little valley

Marsh (Campa)

Hill close to point of water

Back of point of water

Creek

Trunks

Very High Hill

Rocky Hill  
Bald Hill

San Pedro River

lands that are clear and come from a source of unquestioned intelligence and long experience in such investigations.

Mr. Hopkins has been examined as a witness by both parties in several of the cases now before the Court, and his official reports as a special examiner for the Department of the Interior upon these subjects are in evidence as expert testimony of a high order. The following is presented as a part of the argument for the appellant to be considered on its merits as an argument and not as testimony in this cause, as it is not in the record.

In speaking of the Babacomari grant with which he made himself accurately familiar when he examined it as an agent of the United States, as is shown by his reports and depositions, he says:

"First, with respect to its location. The regulations of the 30th of May, 1825, made by the legislature of the State of Sonora for carrying into effect the act of the Mexican congress of the 4th of August, 1824, which gave to the several States the revenues derived from the sales of the public lands, required that the tract petitioned for should be surveyed by a *government surveyor* before the same could be offered for sale by the government to the highest bidder at public auction.

"In the year 1827 the tract of land known as 'San Ygnacio del Babacomari,' denounced by Ygnacio and Eulalia Elias, was by the constitutional alcalde of the presidio of Santa Cruz segregated from the public domain by an official survey, and clearly designated and located by *natural landmarks*, as is shown by the following eye-sketch made from the original field-notes of said survey:"

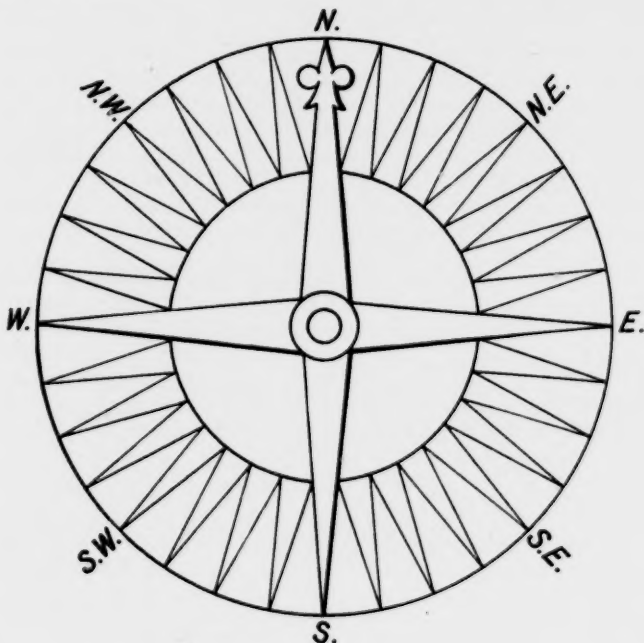
(See diagram.)

"The foregoing sketch is given merely to show clearly that the tract surveyed is *unquestionably* located by *natural landmarks*, since the landmarks shown thereon can all be identified on the ground, the *hot spring* especially being a prominent and well-known landmark. The portions of the lines in the sketch which are *dotted* were *not measured*, but the

distances were estimated, as was usual when the ground was very rough.

"The surveyor, in making the survey, followed the system as laid down by *Galvan* in his work on the survey and measurement of lands and waters (*Ordenanzas de Tierras y Aguas*), except that the *side lines* were not run, which was often the case, and which manifestly is not *necessary* for the *location* of the tract surveyed. Very often but *two lines* were run, one for the *length* and one for the *width* of the tract.

"The instrument used in making the survey was similar to the 'mariners' compass,' the dial of which was divided into 32 points—8 points of  $11^{\circ} 15'$  to each quadrant—of which the following is a tracing, taken from *Galvan's work* above referred to:



"The Spanish words for east and west are 'este and oeste,' 'oriente and occidente,' and *sometimes* 'levante,' where the sun rises, and 'sonéinte,' where it goes down.

"The alcalde who made the official survey of the Babacomari was probably not very expert in reading the points of the compass which he used, or, as sailors call it, 'boxing the compass,' since he sometimes writes 'oeste' with a 'u,' thus, 'ueste,' and 'este' with a 'v,' thus, 'veste.' It is, therefore, not strange that he got tangled in giving the points of the compass in writing his field-notes of the survey, especially as he attempted to give both the *fore* and *back* sights on the lines he was running. It will be observed that on the dial of the compass shown by the foregoing sketch only the *principal* points are indicated by the letters giving the course, as N., N. E., E., etc., the intermediate points not being marked by letters. Therefore these points would have to be written by the surveyor from such knowledge as he might have of the *proper reading* of the 'mariners' compass.' But whatever mistakes he may have made in writing his notes of the courses run, he made *no mistakes* in describing the *natural landmarks* to which he intended the courses to run; and hence any *mistakes* he may have made, either from *carelessness* or *ignorance*, in writing the words giving the courses do not affect the *certainty* of the *location* as determined by *unmistakable landmarks*.

"It would seem at the first glance that the initial point of the survey cannot be ascertained from the field-notes, since he only placed a cross thereat, from which he took *no bearings*; but it will be observed that from this initial point he measured 100 cords on a given course to a *natural landmark*; hence the initial point might be ascertained by retracing this line of one hundred cords to the initial point; and, further, after finishing the survey of the westerly end of the tract, the surveyor says that he returned to the *central point* in front of the *sienea* of Babacomari.

"In my experience of many years with respect to the location of Spanish or Mexican land grants, I cannot recall *one instance* in which boundary landmarks have been established by *bearings* to other objects, and I can remember but a very few in which the tract granted is more clearly located by the title papers than is that of the Babacomari.

"It is proper to observe that while the boundary calls of Spanish and Mexican land grants are exceedingly unrelia-

ble so far as they relate to *course* and *distance*, the *natural landmarks* called for are almost always so clearly described that they can be easily identified, the reason of which is readily understood—the people were pastoral in their habits, were much of their time on horseback looking after their stock; hence they naturally acquired the habit of observing landmarks and giving them *characteristic names*.

"While it would be difficult, if not impossible, to find a Mexican land grant the *corners* of which could be found by tracing the *courses* and measuring the *distances* called for, the corners can easily be ascertained from the description given of the *natural objects* called for as landmarks.

"Many instances could be given from records showing how little reliance can be placed upon the *courses*, *distances*, and *areas* given in Mexican land surveys, a few examples of which will serve as illustrations:

"A *ranchero* in California obtained a grant for half a square league, which was measured off to him by the *alcalde*, who, knowing that 5,000 varas square embraced *one square league*, and also knowing that 2,500 was *one-half* of 5,000, concluded that 2,500 varas square embraced *one-half* of a square league. Another *alcalde*, in writing his field-notes of a survey, said: 'We measured from the *north* to the *west*,' intending thereby to describe the *northern boundary* of the tract he was surveying, which intention could only be ascertained by the character of the landmarks described. Many similar instances could be given as to the uncertainty of *course* and *distance*, and equal uncertainty and incorrectness is found with respect to *area*.

"The field-notes of the survey of the Babacomari, on being returned by the surveyor, were approved by the attorney general (promotor fiscal), whereupon the tract, as surveyed, was duly published for thirty days, at the end of which time it was sold to the denouncers at the government price, whereupon a *patent* was issued therefor to the denouncers, Ignacio and Eulalia Elias, by the treasurer general, who declares that by virtue of the authorities conceded to him by the laws he gives and adjudicates the tract of land described to the denouncers as a sale, limiting the grantees to the *termini* and *boundaries* described in the *proceedings of survey*, and directing that the grantees and their successors be protected in the peaceable possession of the said tract of land.

"On the receipt of the patent the grantees went into pos-

session of the tract purchased, placing stock thereon, and held possession thereof until forced to abandon the place on account of the ravages of the Apache Indians. (*See testimony of Francisco Leon and Santiago Espinosa. Record, pages 82 and 83.*)

"It is historically notorious that some time between the years 1830 and 1840 the settlers in the valley of the San Pedro were driven from their ranchos by the Apaches and that life in that region was not thereafter safe until comparatively recent times."

V. Mr. Hopkins then cites the following adjudications as to the surveys and boundaries of Mexican land grants, which show the indulgence that has been given to them on account of the public policy of Mexico in bringing this vast country under the influence of civilization, and on account of the difficulties of every sort that interfered with making accurate surveys, of which the ignorance of the surveyors and the inaccuracy of their field-notes was a conspicuous feature.

The following are the cases cited by Mr. Hopkins:

"1. *Rancho of Balsa de Escarpinos. Juridical measurement and possession.*—Beginning at the "rincon" (corner) of the "Balsa de los Escarpinos," which is situated to the west, they measured 233 cords towards the east, and from the lands of Trinidad Espinosa on the south 70 cords towards the north to the first willow tree in the cañada of San Miguel.' Confirmed by land commission and patented, the commissioner in his opinion remarking that the description of the tract was vague, but that he supposed the boundaries could be ascertained on the ground.

"2. *Rancho of San Agustin, confirmed to J. L. Majors. Juridical measurement and possession of one square league.*—'The measurers commenced by running the line to the N. x W. N. until reaching the lands on the S. x S. E., to which place were measured 100 cords (of 50 varas each), where a landmark was placed; thence E. to W. were measured 1,025 varas, where was placed a landmark, the measurers declaring that they had measured one square league.' The courses given are unintelligible, and the measurement, supposing



that one line was intended for the *length* and the other for the *width*, the area given would be less than  $\frac{1}{4}$  of a league. Patented for one square league.

"3. Rancho of 'Rosa Morada,' confirmed to Cruz Cervantes. *Juridical measurement and possession.*—'Being at the foot of the hill on the north side of the rancho, from that point were measured 100 cords to the point of the slough of "Tequesquite," and from that point, which is to the east of the Arroyo Sico, shall serve as a boundary, completing the sitio in the Portezuelo of los Pichecos.' *Patented.*

"4. Rancho of 'Las Mariposas,' granted to Juan B. Alvarado. *Boundaries given in grant.*—'Ten square leagues between the Sierra Nevada mountains and the Chervehelas, Merced, and San Joaquin rivers.' No juridical measurements made nor possession given. *Confirmed and patented to Jno. C. Fremont for eleven square leagues.*

"5. Rancho of 'Simi,' granted to Jose de la Guevara y Noraga.—Juridical possession fixed as boundaries 'a straight line to the north, from a crest of large stones which is found to the west of "Simi," between the mouth of the "Salto" and the waters of the "Santa Rosa," as far as the top of the hill which divides "Cayequas" and "Las Posas."'

"The foregoing examples, which might be increased to hundreds, will be sufficient to give an idea as to the manner in which land surveys were made in California during the time of the Mexican government of the country.

"It is hardly necessary to remark that in none of the cases referred to could the location of the tract have been ascertained without *going upon the ground* and seeking the same *without regard* to the *courses* given and the *distances* said to have been measured. It is proper to remark that the *true* distance between the landmarks mentioned in the field-notes of surveys is generally *much in excess* of the *distance given particularly* when the distance has been *estimated*.

"In addition to what I have heretofore said relative to the authority of the State of Sonora to dispose of the public lands within the borders thereof, it will not be amiss to give some further historic facts.

"In the early '30s (I forget the *exact date*) a number of the inhabitants of Sonora petitioned the government thereof for a large tract of land to the northeast of Tucson in the region then infested by the Apache Indians for the purpose of colonizing the same, thereby forming a barrier against

the inroads of the savages. The tract petitioned for was called *Tres Alamos*, embracing some 60 square leagues.

"The treasurer general of the State had no authority under the regulations of the 20th of May, 1825, to make such a grant; the petition was therefore made to the *State government*, and, being favorably received, the treasurer general was directed to take testimony as to whether or not the petitioners possessed sufficient *means* to establish a colony on the tract asked for.

"The records show that the proceedings *progressed favorably* until 183- (the exact year I cannot remember), when the following entry was made therein: 'Proceedings suspended on account of the uprising of the Apaches.'

"This is an important fact, since it shows that the State of Sonora at that time claimed to have absolute authority to dispose of the public lands within its limits, and, further, it shows that at that date the Apache Indians had such control of the region of country lying on the San Pedro river that no *ranchero* could there, with any degree of safety, hold possession of the tract of land which had been sold to him by the State and of which he was required to keep *possession* unless forced to abandon it on account of the hostility of the Indians.

"This historic fact certainly shows that the State of Sonora claimed the right of absolute authority in the disposition of its public lands; and the fact that in the year 1830 an act was passed for the appointment of *Federal commissioners* to purchase lands in the frontier States of the Republic for the purpose of establishing colonies thereon shows clearly that the Federal Government recognized the right of the States to dispose of their public lands in such a manner as they might see fit. The law of April 6, 1830, provides:

"Article 3. The government shall appoint one or more commissioners, whose duty it shall be to visit the colonies of the frontier States; to contract with the legislatures of said States for the purchase by the nation of lands suitable for the establishment of new colonies of Mexicans and foreigners; to enter into such arrangements as they may deem proper for the security of the Republic with the colonies already established; to watch over the exact compliance of the contracts of new colonists, and to investigate how far the contracts already made have been complied with.

"Article 4. The executive is empowered to take possession

of such lands as may be suitable for fortifications and arsenals and for new colonies, indemnifying the State in which such lands are situated by a deduction from the debt due by such State to the federation.'

"It will not be out of place for me to say that for forty years I have had constant experience in the examination of Spanish and Mexican land grants in California and other places, having been several times sent to Mexico as special agent of the Department of the Interior to examine original records, and having as such agent examined the government archives of the State of Sonora, which extend back to the year 1661 (with respect to land grants), and in such service I have become familiar with the vague and uncertain manner in which the boundaries of lands are described in the Spanish and Mexican records, this vagueness being found through all the records I have examined both in California and Mexico.

"I omitted to say that *transcripts* of the original records and the proceedings thereon before the United States board of land commissioners in the cases from which I have taken the extracts sent will be found in the office of the Attorney General in Washington, in case you should wish to examine the same.

"The following extract from the *New American Cyclopaedia* gives a brief description of the last scene in the dramatic life of General Santa Anna in Mexico :

"In 1848, desiring to seek an asylum on a foreign soil where he might pass his last days in that tranquillity which he could never find in the land of his birth, on the 5th of April he sailed for Jamaica, where he remained for several years, but the anarchical condition of Mexico under the presidencies of Herrera and Avista turned men's eyes once more upon him, and, returning to Mexico in 1853, he was received with great enthusiasm. He was appointed president for one year, after which time he was to call a constituent congress, but he fomented a new revolution by which he was declared president for life, with power to appoint his successor and the title of most serene highness. He began to rule with despotic authority and the revolution of Aguilla followed, led by General Alvarez. After a struggle of two years Santa Anna, finding himself without resources, since he had spent the \$10,000,000 of the Gadsden treaty, signed

an unconditional abdication and sailed for Havana on the 15th of August, 1855.'

"From all that can be gathered from the political history of Mexico and from the customs of the country in surveying lands, as shown by the records, it is seen :

"*First.* That the State of Sonora was, under the law of the 4th of August, 1824, authorized to dispose of the public lands lying within the limits thereof ; and

"*Secondly.* That the tract of land called San Ygnacio del Babacomari, sold to Ygnacio and Eulalia Elias, was segregated from the public domain by a survey made in accordance with the usual customs of the country, and that the *locus* of the tract surveyed was much more definitely fixed than were the boundaries of most of the grants made in California about the same time."

These statements of Mr. Hopkins are sustained by the public records, judicial rulings, and the known and recognized facts of history within the judicial knowledge of the court, and are therefore quoted as valuable aids in the search for the truth relating to these transactions.

The land laws and the sales under them were far more accurately observed by the authorities of the *State of Sonora* than they were in New Mexico and California by the officers of the Federal Government who had the disposal of Government lands in those *Territories*. The legal *presumptions* in favor of such titles and the facts of public history that support them are stated in *Gonzales vs. Ross*, 120 U. S. Reports, with conclusive effect as to the validity of the grant and conveyance to Elias.

#### VI. *Did Sonora Have the Right, under Mexican Law and Usage, to Make This Sale of Vacant Lands ?*

In our acquisitions of territory from Spain, France, and Russia we have recognized and dealt with *regal powers* concentrated in and represented by the Crown, and in transferring the people of the ceded territories to the enjoyment of the new and extraordinary privileges of citizenship in a

free, constitutional republic we have provided with care for their full enjoyment of those powers and privileges in their future political relations to the United States and to the States which we covenanted should be formed of the ceded country.

In Mexico and Texas, on the other hand, we found organized republics, and in Mexico we found our dual system of States united in a Federal Government, each and all based upon the ultimate sovereignty of the people, with whose agents we conducted and concluded the negotiations.

In these treaties we recognized the leading and fundamental distinction between a republic and a government that is monarchic, between "a government of the people, for the people, and by the people" and one that derives its authority from some source that is above and independent of the people and not from the consent of the governed.

The cases are different. A change of government from a monarchy to a republic *must be a total revolution*. It is a change in substance and not in form merely. *It transfers to the people all the powers and rights that belonged to the Crown* and retains only such institutions, privileges, and vested rights as the people, through their newly constituted authorities, see proper to preserve. Such a total and radical revolution was that which finally expelled the royal and imperial governments from Mexico and substituted for them in everything a republic of confederated States that were free, independent, and sovereign.

All these ordinances, changing the form and nature of the government, declare that "its integral parts are free, sovereign, and independent States in whatever belongs to their internal *administration* and government, as shall be further stated in this act (the constitutive act of January 31, 1824) and in the general constitution."

Before 1820 the Crown of Spain owned all the lands, not granted by it to others, from the borders of Oregon to Terra del Fuego (not including Brazil), and bounded by the Sabine

river and the Atlantic on the east and the Pacific ocean on the west. The Spanish Crown became the owner of this vast domain in virtue of the papal bull of Pope Alexander VI, in 1493, and under the rights of subsequent discovery and conquest. But, even a Crown title to the public domain of any country, when it relates to the sovereign powers of government and administration and not to special ownership vested in the Crown for purposes of government or personal emolument, *is always coupled with the trust that the lands are held for the use and benefit of the vassal people.*

The established independence of the Republic of Texas, although it was denied by Mexico, destroyed the title of the Mexican nation to 274,356 square miles of territory, even while war was still flagrant between those States, and we recognized the fact.

It is the overthrow and destruction of dominion—sovereignty—that passes the title of a conquered land to the victor when a government is substituted that is new in form and substance, and not a succession or inheritance that preserves the chain of title in such cases.

In Mexico the title to the soil, subject to the trust that the people should enjoy it, was first in the ruling Spanish dynasty; then it went to the empire of Augustin I (Iturbide) under qualifications which admitted the people to the ownership and excluded his crown and family from some of the most essential rights and powers that belonged to the Spanish Crown. Then the States and people of Mexico asserted their sovereign ownership and dominion over the public lands, and in the "constitutive act of the congress of deputies" elected by them they provided, in January, 1824, that—

"The Mexican nation is forever free from and independent of Spain and of all other nations whatever, and is not nor can it ever be made *the property* of any person or family."

The widest signification of the term "property," as connected with the sovereignty or dominion over a nation (when it is interpreted with reference to the people who comprise the nation) is, that *they are subjects of the regal power* and have no connection with the Government, *except through allegiance and the duty of absolute obedience and subordination to the royal will.* The Mexican "nation" had been, but ceased to be such "property."

This condition of the people of Mexico was radically changed by the article 2 above quoted, and the condition that supervened *was that of citizenship in a republic, with the attendant rights which, in the aggregate, included and, indeed, created the sovereignty of the people.*

As an element of this sovereignty, and inseparable from it, was the "property" in the public lands and the political eminent domain over the lands held in private ownership. The people became "the nation." The change was radical.

After "the constitutive act" of January 31, 1824, which declared the fundamental principles upon which the Republic should be based in the constitution that was adopted by the same congress of deputies on October 4, 1824, nothing in the way of ownership, title, dominion, eminent domain, or usufruct in the lands of Mexico remained in the Spanish Crown or in the Empire of Augustin I (Iturbide).

In article 6 of the same act of January 31, 1824, it is ordained that "its—the Mexican nation's—integral parts are free, *sovereign*, and independent *States* in whatsoever belongs to their internal administration and government and as shall be further stated in this act and in the general constitution." No such declaration was made in respect of the Federal Government as to its sovereignty. The "provinces" thus erected into free, sovereign, and independent States are each named in article 9 of this "constitutive act," and Sonora and Sinaloa, which had before been united in one province called "the State of the West," were separated into two states.

All these provinces or States had chosen their delegates to this congress, who subscribed the constitution.

It had been called by Iturbide, as emperor, but he abdicated and left the country before it made any decrees. The empire being destroyed, the existence of the Republic and the sovereignty of the States were declared by the same act without the intervention of any time.

The birth of the nation—the Republic, and the recognition of the States—was identical in point of time, and they were born of the same mother—the people of Mexico. The decree was for the people and by the people, through their deputies chosen in the several provinces.

The ultimate title to the lands within the territorial limits of the Republic was resumed by the people, and the administration of such as were not in private ownership or were not reserved to the Federal Government was left in the States within whose sovereign jurisdiction they were located.

That constitution was modeled after that of the United States, but the power was not expressly granted to the National Government to dispose of the territory of the nation within the States, if it had any, which was conferred upon Congress in our Constitution.

The National Government and the State governments, created by the same sovereign power of the people, at the same time, and by the same decree of their representatives, did not confer upon or release to each other any powers that were carved out of any pre-existing rights of statehood or sovereignty. In this respect also the Mexican National Government was unlike ours in its origin. The constitutive act of January 31, 1824, was an original distribution of powers to each of these governments, separating them for the purposes of national and local government, which powers resided in the people.

The "constitutive decree" in article 3 declares that "sovereignty resides primarily in the nation" (not in the Federal or the State governments), "and hence to it (the nation)



alone belongs the right of adopting and establishing through its representatives the form of government and other fundamental laws that it may deem proper for its (the nation's) preservation and happiness, modifying them to suit itself." In that law the subject of providing for the support of the National and State governments was left open.

In article 24 the power of these "free, sovereign, and independent States" to ordain constitutions was recognized with only this limitation, that "the State constitutions must not be repugnant to this act or to the provisions to be contained in the *general* constitution."

There is no provision in the "constitutive act" or in the general constitution of 1824 which confers upon the National Government any title to the lands within the States; hence an assertion of the States that they have the right of disposal of lands within their limits is not repugnant to the constitutive act of January 31, 1824, or to the constitution adopted October 4, 1824.

Prior to August 4, 1824, the States of Sonora and Sinaloa, which were recognized as being separated in their sovereignty in the constitutive act of January 31, 1824, reunited as one State under the name "Estado del Occidente," and the State was so treated in the apportionment made by the decree of the constitutive congress of the United States of Mexico, dated August 4, 1824.

That decree provided sources of revenue for the "Federal Government" and also for the States, and was the first law on that subject.

In the meantime the "constitutive congress of the State of the Occident" was preparing the State constitution, which declared that "the government of the State is republican, representative, popular, federal." It conferred on its congress the power "to impose taxes," "to promote and encourage agriculture," "to settle the boundaries of the lands of the native inhabitants" (Indian tribes), "to make rules for colonization in conformity with the laws," "to elect in

accordance with the general constitution the president and vice-president of the Mexican federation, the ministers of the supreme court of justice, and senators of the congress of the union," and, "finally, to exercise all the powers of a legislative body in its internal government and administration not contrary to the general constitution and the constitutive act." These powers are plenary, and they include the dominion over the lands within the State of the Occident, because that is not repugnant or contrary to any right granted or admitted to exist in the Federal Government relating to those lands.

Up to this point the same principles apply to the legal and historical situation in Mexico that determine the relative rights of the States and the United States Government under our own dual system of government. The United States has no land except such as it has acquired by conveyances from the States or by treaty cessions. It did not require any express provisions in the constitution of the States or of the United States to create or establish the rights of our States to their lands as a consequence of their sovereign statehood. That was never disputed.

The universal law of republics is that, the people being sovereign, the vacant land within the limits of a State that is "republican, representative, popular, federal, and sovereign" belongs to the people until it has passed into private ownership or has been ceded.

It was in view of these facts and principles that the Congress of the United States welcomed Mexico into the sisterhood of republics and rejoiced that her people had become the only source of sovereign power in that country. She was recognized as a free and independent federal republic, the national center of a federation of sovereign states, and Mexico has firmly established that republican federation in despite of the most serious impediments, internal and foreign, all of which we have deplored and some of them we have resented as a nation. The attempted centralization of

the Republic, in 1836, which was based while it lasted on the reduction of the States to the political status of mere departments of a national despotism, was as repugnant to our views of the rights of the Mexican people as the subsequent empire, which while it lasted placed them in the low condition of subjects of an Austrian prince. We can never justify such a degradation of the rights of the people and the sovereign States of the United States of Mexico for the purpose of denying validity to the laws of Sonora, while the United States is claiming, under such a construction, title to lands in her own right, that Sonora sold to her own people more than half a century ago.

VII. But these rights of the purchasers of land from Sonora are sustained by additional and still more specific facts.

The constitution of the "State of the Occident," adopted in 1825, but prepared in 1824, contains this provision:

*Section sixteenth* (293). "The revenue (rentes) not reserved by the federation by the decree of classification of revenues (rentes) of August 4, 1824, last past, are those which, up to the present time, have formed *the elements* of the revenue of the State."

"Hereafter *the congress (of the State)* will impose the *taxes* which it may deem proper in such amount only as may be sufficient to cover the deficit which may result against the State on account of the general expenses of the Mexican federation which it has to pay and the special expenses of the State itself."

The "act of August 4, last past," referred to in section 16 of the constitution of the State of the Occident, is a classification of the general and special revenues (rentes) of the Federal Government. They are stated under ten heads, including import and export duties and specific taxes in the nature of excises and imposts.

None of these include unoccupied or vacant lands or

lands belonging to the people in the States, or lands within the States.

It was the intention of this "constitutive act" to derive the general (administrative) expenses of the Federal Government from a tax laid directly upon the States respectively in proportion to "their wealth and population." (See section 17 of the act.)

To enable the States to raise these sums the revenues (rentes) not expressly granted to the Federal Government were expressly reserved to the States in section 11 of this act:

"11. The revenues (rentes) not included in the foregoing articles belong to the States."

Section 14 provides:

"The States of the federation shall be assessed in the sum of \$3,136,876, which it is estimated is needed for general expenses."

The amount assessed to the State of the Occident was \$53,125, for which the constitution of that State authorized its congress to levy taxes.

Section 8 of article 161 of the federal constitution of 1824 makes it the duty of the States—

"To present annually to each one of the houses of the general congress a minute and comprehensive report on the amounts that are received and paid out at the treasuries within their limits, together with a statement of the origin of the one and the other and touching the different branches of the agricultural, commercial, and manufacturing industries," &c.

VIII. In Mexico it has all the time been held and considered that this provision for the direct taxation of the States for the general expenses of the Federal Government was accepted by the States because the public lands within their limits were their property and were comprised in the "rentes," from the sale of which they would derive revenue.

None of these taxes were levied upon the Territories of New Mexico or Upper or Lower California, because the lands in those Territories belonged to the Federal Government, being within its sovereign jurisdiction, and the proceeds of their sales were general revenues of that Government.

The National Government began the experiment of colonization in 1823, under the administration of Domingues, which they repented of and sought to reverse in 1835, when Texas began to fill up rapidly with colonists from our States. The law of 1823 applied to all the provinces, and was supplemented on the 18th of August, 1824, by the act of the constituent congress. This act is a clear declaration of the respective rights and jurisdiction of the States and the Federal Government as to the disposal of lands that were unoccupied in the States and in the Territories. The rights of the States were respected even under the policy of colonization by immigration from other countries, which was properly a matter of national concern and regulation.

It is declared in article 2 of that law that "the objects of this law are those *national lands* which are neither private property nor belong to any corporation or town (*pueblo*), and can therefore be colonized," and it provides that (article 3) "to this end the *Congress of the States* will form as soon as possible the *laws and regulations* of colonization of *their respective demarkation* with entire conformity to the constitutive act, the general constitution, and the rules established by this law." The fourteenth article prohibits the formation of colonies within ten leagues of the seacoast and within twenty leagues from the boundary of any foreign country, and article 5 reserves the right of the Federal Government to appropriate those lands to public uses.

"Article 15. The government, in conformity with the principles established in this law, *will proceed to colonize the Territories of the Republic.*"

On the 21st of November, 1828, rules and regulations were adopted by the constituent congress for carrying this colonization law into effect. These regulations applied *alone to the Territories*. The reason for this is given in a precis, or preamble, to those regulations as follows :

" It being stipulated in the fifteenth article of the general law of colonization of August, 1824, that the government, *in conformity with the principles of established law*, shall proceed to the colonization of the *Territories* of the Republic  
\* \* \* his excellency has seen fit to determine on the following articles : "

"Article 1. *The governors of the Territories* are authorized  
\* \* \* to grant vacant lands in their respective Territories to such contractors (*empresarios*), families, or private persons, whether Mexicans or foreigners, *who may ask for them for the purpose of cultivating and inhabiting them.*"

A grant for colonization was not definitive until it was approved by " *the territorial deputation* " or, being re-used by that tribunal, by the supreme government.

In 1831 the entrance of people from the United States on the northern frontier, except with passports, was prohibited.

On the 24th of April, 1835, a law was enacted by the Federal Congress, which, taken in connection with the law of August 18, 1824, and the regulations under it (above quoted), leaves no doubt as to the ownership by the States of the vacant lands within their respective limits, as follows :

" 4. The General Government may, in accordance with the third and fourth articles of the law of sixth April, 1830, *purchase of the State of Coahuila and Texas the amount of four hundred sitios, which it says it is under the necessity of selling.*"

As late as May, 1875, this right of the States to the vacant lands within their limits was expressly declared in articles 5, 6, and 7 of an act of the Congress of the Union. (See Hall's Mexican Law, §§ 528 to 535.)

IX. After the promulgation of the Federal constitution, in October, 1824, the States proceeded to enact laws for the disposal of the public lands within their limits, to which no objection was made by the Federal Government. "The State of the West," through its constituent congress, enacted a law, No. 30, on the 20th of May, 1825, which carefully provided a complete system regulating the sale of its public lands. This task was a comparatively simple one and was not embarrassed with any question as to the right of the State to dispose of its lands or as to the best regulations for that purpose.

The whole of the territory of Mexico was formerly divided into twelve provinces and kingdoms.

By royal decree of October 15, 1778, the States of Sinaloa and Sonora were included, with other States and Territories, in the jurisdiction of the audiencia of Guadalajara, and so it remained until the constitution of October, 1824, was ordained. This audiencia had the power to sell the public lands and to grant titles in fee to the purchasers, and they proceeded to do so in many cases. (See Hall's Mexican Law, §§ 87 to 109.)

The proceedings to obtain a grant of lands were in substance the same that were afterwards prescribed by the State of the Occidente. (See Hall's Mexican Laws, §§ 172, 173.)

By a royal decree of November 23, 1792, the commandencia general of Sonora and Sinaloa was independent of the viceroy as to many local matters, and there was attached to the audiencia of Guadalajara the subdelegacy of superintendence of the royal treasury, which gave the same power to sell lands as was vested in the intendencia by the ordinance of 1786. (See Hall's Mex. Laws, § 186.)

This *cedula* was the model for the procedure for selling the lands of the State adopted by the State of the Occident when it was declared free, independent, and sovereign.

From these royal decrees of Spain and the practice under them it is seen that the States of Sinaloa and Sonora were

independent of the Mexican vice-regency as to the sale of the public lands at the time and before the revolution which overthrew the monarchy and established the republic.

The root of their title had no lodgment within the jurisdiction that Domingues, Iturbide, or Heréra abolished, but in that of Sinaloa and Sonora, which, without yielding any sovereign or territorial rights, aided by their deputies in establishing the national republic, whose integral parts were free, sovereign, and independent States, *and in whose people the title of the public domain rested.*

X. These views of the question as to whether the public lands of Mexico, in 1824, within the limits of the States belonged to the people of the States, to be disposed of under their laws, or whether they belonged to the Federal Government, are supported by very learned jurists in Mexico.

A quotation from the deposition of Señor Eduardo Caostaneda, given in the case of *The United States vs. Coe*, will shed a true and strong light upon this question.

His career as a publicist has been eminent in Mexico, where he is a senator and has held several distinguished judicial offices, including that of one of the judges of the supreme court of Mexico. He testifies as follows :

"Q. State if you have made a special examination of the laws relating to the sale or granting of lands by the State of Sonora since 1824; and, if so, state your knowledge thereof.

"A. I have, and the State of Sonora had ample legal power and authority to dispose of its lands in the manner provided by its own laws. The reason is that the State of Sonora did not have its sovereignty and rights limited only as far as the authority and rights it delegated to the Congress of the Union, and this is proven by article first, second, 109, section 31, article 293, of the constitution of the State, made on 21st October, 1825, sanctioned and promulgated on the 2d of November, 1825. This constitution was enacted for the State of Occidente, composed of the States of Sonora and Sinaloa. The limitations of those rights are found in the laws of the federation, in the part which refers



to lands, and found in the laws of classification of rents for revenue, dated 4th of August, 1824. That law does not name among the revenues of the Federal Government the revenue proceeding from the sale and products of vacant lands, and consequently those lands belong to the State according to article 11 of the same law. Said law, as can be seen in articles 9 and 10, does not treat exclusively of taxes, but as well of the property belonging to the government, and one as well as the other is comprised under the name of 'rentes.'

"The State has been always exercising the authority to dispose of and legislate on the vacant lands without opposition from the federal authorities, and this is proven by the laws enacted by the general congress, in which, in an implicit manner, is recognized the authority that the States had to dispose of the public lands." (Decrete de Septiembre de 1824, sombre de administracion de la hacienda publica y los estodos.)

"Said decree places under the administration of the general commissaries the taxes and all the revenues of the property of the Federal Government, and in articles 4 and 5 are there enumerated; and it is seen that there are not included the public lands, precisely because they belonged to the States.

"The decree of the 16th November, 1824, arranges the administration of the public treasury of the nation and omits absolutely to say anything about vacant lands, notwithstanding speaking (of) and enumerating all other taxes and revenues. In virtue, therefore, of the authority that the State had to dispose of the public lands it issued several laws and, amongst others, that of July 11, 1834, and it is seen clearly the way that it disposed of the lands—to sell them." \* \* \* "The only limitation that the State had to dispose of its public lands is that of not being authorized to colonize them, except under the basis that the decree of 18th August, 1824, establishes; but this decree refers exclusively to colonization. By colonization I mean, to give them and to establish there what we understand a colony or union of individuals that come from other parts to settle; but that law did not prohibit absolutely the State to sell us Mexicans any of that land. This is confirmed by the fact that the Congress of the Federation declared null some of the dispositions of the State on colonization, notwithstanding-

ing it did not declare null the laws of the same State in virtue of which it disposed of said vacant lands in other ways." (Decree of 21st February, 1824, which declared null a decree of the general legislature of Coahuila and Texas on account of having been enacted on colonization; decree of 14th May, 1851, which declared null a decree of the legislature of the State of Sonora on colonization.)

"From these decrees deduction is made that the limitation on the State only refers to colonization, and that they could dispose of it in other ways—the public lands.

"That is all confirmed by our public right, according to which no one doubts of the validity of the alienations, as that of the Algodones was made by the authorities of the States, under the federal system, by virtue of its own powers." (For instance, article 2 of the decree of 3d December, 1855.)

\* \* \*

"The decree (of Santa Anna) of 25th November, 1853, affected in no way the validity of the titles issued by the States under the federal system. That never had application, and neither the very tribunals existing in the same epoch in which the law was issued never would have applied to it as to the titles issued by the States according to their own laws, because said decree contains provisions with retroactive effect, and provisions with retroactive effect do not apply, nor have they been applied by the Mexican tribunals, because they are null *ipso jure* according to the civil law in vigor in the epoch of the Spanish government and in conformity to the constitutional laws of the years 1824, 1836, and 1843, according to which the inhabitants of this country have the guarantee of not being tried by laws *ex post facto*.

"For this reason there can be no doubt that the decree of the 25th November, 1853, does not affect the validity of the titles issued in the epoch of the federation.

"Question by Judge SLUSS:

"Q. I call your attention to the expression in article 3 of the law of August 18, 1824, as follows: 'Conforming themselves to the regulations established in this law,' and ask you, in your opinion, whether that would include the provision of section 11, to the effect that no person should be permitted to receive more than eleven square leagues of land.

"A. This law refers exclusively to colonization—that is to say, it prohibited the States to give more than that expressed in article 12 to the colonists that came to settle vacant lands, but it did not limit the authorization or power which the States had according to their own laws to sell to any Mexican a large extension of land. \* \* \*

"Q. Is it not the fact that the title to all the vacant land as between the State and the Federal Government was originally vested in the Federal Government?

"A. From the moment that the nation entered into the federal system that right originally belonged to the States as owners of their own territory, in the quality of free, independent, and sovereign States, with no further limitation than the powers and rights delegated by the States to the Congress of the United States.

"Q. By what instrument were these powers delegated to the Federal Government?

"A. By the Federal constitution, and also by the constitutive congress, among which is found that of August 4, 1824, in the part which refers to lands, and that of the constitution of the State, section 16, article 293, page 84, which says: 'The revenues which the Federal Government did not reserve to itself by the decree of classification of the 4th of August, 1824, are those that until this date have formed *the elements* of which the treasury of the State is composed.' \* \* \*

"Q. Had the State the authority to absolutely alienate its land without the consent of the Federal Government?

"A. It had."

The deposition of Judge Guillermo H. Robinson in Coe's case supports the statements and opinions of Judge Castenada in every particular as to the laws of the Federal Government and of Sonora and their effect upon the right of disposal by the States of the public lands within their limits. They show that because the land is public it does not belong to the Federal Government, but it belongs to the States in virtue of the sovereign rights of the people and of the provinces—the first form of separate government—when they were declared to be States and the owners of these "*rentas*," as elements of their treasuries. These public re-

sources were, in both the Federal and State constitutions, expressly reserved to the States, with no restrictions of their full power of disposal except in reference to one policy of national concern, that they should not be granted to large bodies of foreign colonists except in conformity to national laws and regulations.

No witness or other person learned in the law has expressed an opinion in any of these cases to the reverse of those stated in the depositions of Judges Castenada and Robinson.

XI. Hon. J. A. Forbes, consul of the United States at Guaymas, Mexico, was for fourteen years keeper of the archives and translator for the surveyor general in California. He was examined as a witness in Coe's case. His statements and opinions concur with those of Judges Castenada and Robinson as to the right of the States of Mexico to dispose of the public lands within their limits.

After giving a full statement of the method of granting lands under the Spanish regime he says:

"After the Mexican independence the manner and mode of granting lands was not materially changed, but the form continued to be used and observed even as late as 1838. The Mexican Congress passed laws for the distribution of vacant lands. Lands were given gratis in the Territories of the Republic, of which the law of 18th of August, 1824, and the regulations of 21st of November, 1828; but the States did not make grants in that way. The lands of the States were not given away, but sold to the highest bidder in the same way that they had been alienated prior to the date of independence. The State of Sonora had its colonization law of the 20th of May, 1825, and so did the State of Chihuahua. The grants that have been seen today seem to have been granted in accordance with the provisions of the colonization law of 25th and that of the 11th of July, 1834.

"Q. 36. When you refer to the colonization laws of 25th of July, 1834, do you mean the colonization laws of the Republic of Mexico or the colonization laws of the State of Sonora?

"A. By the law of 4th of August, 1824, the supreme government of Mexico passed a law defining what the revenues of the government were and left to the States all that source of revenue that was not mentioned in the law as belonging to the Federal Government, and that revenue which was not mentioned in the law as pertaining to the Federal Government was the revenue that could have been derived from the sale of public lands.

"Q. 37. Prior to the enactment by the General Government of the law of August the 4th, 1824, was part of the revenue that which was obtained from the sale of the vacant lands? In the colonization laws of the Mexican Government, passed after the independence of Mexico, did the General Government attempt to dispose of any lands within the demarkations of the several States, or was the government's disposition of vacant lands by its colonization acts confined to lands within the Territories?

"A. My understanding of the general colonization law was that the lands, when given in colonization, were given to the colonists gratis, and the lands were limited only to the Territories of the Republic, which were not free and sovereign.

"Q. 38. Then, if I understand you correctly, your understanding of the colonization laws of 1823 and 1824 and of the other laws of the General Government relating to public lands was that the States owned the lands within their boundaries and the General Government claimed ownership within the Territories?

"A. Yes, sir; by consent of the General Government.

"Q. 39. Was not the distinction between the colonization act of August 18, 1824, and the manner of disposing of vacant lands in the States that the lands were given gratis under the colonization law, while under the procedure in the States they were sold?

"A. Yes, sir.

"Q. 40. Prior to the law of August 4, 1824, was it not the fact that there were no sales of the fee made, but that the juridical possession only was given?

"A. Yes, sir; only a permit to occupy.

"Q. 41. Then under the law of August 4, 1824, and of the States, the laws of the States of November 25, 1834, the proceedings amounted to the sale of the land in fee?

"A. Yes, sir; that is the way all the titles were issued or

given. By the fifth condition contained in every grant that was made in accordance with the provisions of the act of October 18 and August 24 and article 5 of the regulations of the 21st of November, 1828, it was provided that if the party interested contravened the conditions that were stipulated in the grant he would forfeit his right to the tract so given and it would be subject to denouncement by another party, and in the close of all grants made in this State it was stated that no person could molest or disturb the grantee and that he should enjoy the full and absolute ownership of the land.

"Q. 42. The law of August 4, 1824, as I understand you, granted to the States the right to use the revenue from the sale of vacant lands?

"A. Yes, sir.

"Q. 43. Then the law of August 18, 1824, known as the colonization act, gave the lands away gratis to settlements within the Territories of the Republic, but not in the State?

"A. No, sir.

"Q. 44. It has no effect in the State whatever?

"A. No, sir.

"Q. 45. Were there not in existence on August 18, 1884, Territories other than those of California and New Mexico?

"A. I don't know.

" Examination by Justice SLUSS :

"Q. 46. Have you much acquaintance with the manner of making of these documents, which were called the matrix, in this State of Sonora?

"A. They were nearly the same as those found in California, except in some particulars in which they differ.

"Q. 47. Well?

"A. I have seen many grants of land made in Sonora that seemed to me to be in the same form.

"Q. 48. Are these proceedings made from a memorandum as the several acts which are recorded were performed, or were they made as an entire record after the proceedings were completed?

"A. Each act was inserted in the expediente continued, or the proceedings were continued.

"Q. 49. Then, in your opinion, when an offer of a sale

had been made and no parties appeared, a report to that effect was made at the time and entered in this expediente immediately before any act was performed?

"A. Yes, sir.

"Q. 50. In your opinion, then, it was the act of August, '24, that the States derived their authority from. Was it the law of '24 or a law prior to that time?

"A. The State of Sonora could not derive its right to the land from any Spanish law after the date of the independence, but my opinion is that it derived its power to sell the lands from the law of 4th of August, 1824, the act of August 18, 1824, from the general act enacted by the general congress on colonization, the general law of missions.

"Q. 51. Did the General Government exercise any powers of the land in the States after it had been granted by the States to anybody?

"A. I don't believe they did, except the revenue that could be derived from those sources that are mentioned in the very law itself. Of course the sources of revenue which the government reserved are mentioned in the law, but no mention is made of revenue of the sales of lands as belonging to the General Government, but it says all sources of revenue not mentioned in that act shall belong to the States, and every paper that was shown today in the archives of this government recite that very law and the power that the government and the State derived therefrom—the act of August 4, 1824."

XII. On the 26th of February, 1879, Mr. Schurz, Secretary of the Interior, appointed R. C. Hopkins "to examine the Mexican archives relating to land grants made in the Territory ceded by the Gadsden treaty for the purpose of detecting and preventing the consummation of fraudulent claims of titles thereto."

Mr. Hopkins was well qualified for this duty by a long experience in such matters and a thorough acquaintance with the Spanish language. In his report, made after exhaustive research, he explains first the *ordinanzas* grants of *realengo* or public lands made under the Spanish laws, and proceeds to say :

"On the 4th of August, 1824, the sovereign general constitutional congress of the United States of Mexico passed decree No. 78, in which is specified the sources of the federal revenue, and the eleventh article of this recites—

"That the rents that are not included in the preceding article of this decree belong to the States."

"As a compensation for the concession of the General Government a sum of between three and four millions of dollars was required to be paid yearly by the States for the support of the General Government.

"This sum was apportioned to the different States according to their population and wealth, the sum apportioned to the State of Sonora being some \$53,000.

"Under this law grants of land have been made in the State of Sonora from 1824 down to the time when the system was changed by legislative enactment.

"After the independence of Mexico the old intendente, embracing the provinces of Sonora and Sinaloa, was called under the new government El Estado del Occidente, Sonora and Sinaloa continuing united under that name until the year 1830, when they were divided by the boundaries, I think, as they now exist.

"Between the time when grants ceased to be made within the intendencia of Sonora and Sinaloa by authority of the Spanish government and the time when they were made by the authorities of the El Estado del Occidente, under the law of 1824 of the general congress and the provisional regulations of the Congress of the State, the granting power was exercised by an officer entitled *comissario general provisional de hacienda credito publico y guerra*, whose headquarters, as shown by the records of the times, were generally at Fuerte, a town in Sinaloa, near the northern boundaries of the States.

"About the year 1825 notes of the expedientes in the archives show that this officer issued a number of grants on proceedings which, under the Spanish government, had not gone further than the approval of the provisional junta de hacienda, having been at that point suspended in 1821 by the revolution.

"In these cases no *barrad* or copy of grant is found in the expediente, but a note is found of the registry of the grant in Cuaderno No. 2, in the office of the comisario general.

"On the 20th of May, 1825, the constituent congress of



free, independent, and sovereign State of the West (Estado del Occidente) passed provisional law No. 30, regulating the system of granting public lands. Under these provisional regulations the prices at which the public lands were to be sold were graduated according to the location and quality of the land. The quantity allowed to one individual was limited to four square leagues, unless the grantee could satisfy the government that he required more for the use of his stock.

"On the 12th of July, 1834, the Congress of Sonora passed the 'Ley organica de hacienda No. 26.'

"This law made no material change of the law of 1825 except in fixing value of public lands. Grants made under these laws were conditional. They were to be occupied, and if abandoned beyond a certain time they were considered as vacant and denounceable, unless the abandonment was caused by the hostility of the neighboring savages; and the ley organica of 1824 provided that if the final title or grant had not been obtained by a petitioner for land, although all the preliminary proceedings had been regularly taken, the petitioner should present himself before the treasurer general within a certain time and show cause good why he had not obtained his title; otherwise the tract claimed by him should be considered vacant and denounceable.

"In granting or selling the public lands the government of the State of Sonora continued the system that had been established under the Spanish government. The same formalities were observed. The lands were surveyed, valued, published for thirty days, and at the end of which time they were sold at public auction to the highest bidder, the treasurer general of the State occupying the same position under the State government that the intendente did under the Spanish government, with this difference, however: the grant given by the treasurer general required no approval of the supreme government."

XIII. Honorable John Wasson, United States surveyor general for Arizona, has very carefully examined the Mexican laws and archives that have come before him in many cases adjudicated by him under the laws of the United States.

In his report on the case of Santiago Ainsa (now in the supreme court on appeal) he says :

"The State of Sonora, under the act of the Mexican congress of August 4, 1824, still claimed the public lands within her limits and still continued to dispose of them under the provisional law of 1825 and the organic law of 1834, both of which had been passed by the State legislature to regulate the disposition of the public lands granted to the State by the law of the Republic of August 4, 1824."

In his report upon the claim of Juan Pedro Camou, October 12, 1879, Mr. Wasson, as surveyor general, has gone into the whole subject of Mexican land grants in Arizona with faithful and industrious research and has stated the history of legislation there with great clearness and with conclusive effect as showing that the public lands in Sonora were the property of the State. The following quotations from his report show some of his statements and conclusions that are most pertinent to the question now under examination. He says :

"From the foregoing laws, ordinances, and decrees it is seen that the constant policy of Spain was to encourage by all means the settlement of her possessions in the new world; that while the absolute ownership of the *realengo* lands was retained by the Crown, laws from time to time were passed for the purpose of enabling the actual settlers to obtain titles to so much of these *realengo* lands as they required for their use and occupation in the pursuits of agriculture and stock-raising. Yet while the terms under which titles to these *realengo* lands could be obtained for actual use and occupation were made so easy as to be within reach of petitioners of humble means, still the government guarded with jealous care their disposition by passing such laws as made it *impossible for the vassals of the King to acquire them for any other purpose than that of actual use and occupation.*

"On the 4th of August, 1824, the sovereign constituent congress of the United States of Mexico passed a decree,

No. 70, in which are specified *the sources of revenue*, and the eleventh article of this decree recites—

“‘That the rents that are not included in the preceding articles of this decree belonged to the States.’

“As a compensation for this concession by the General Government, the sum of \$3,136,875 was required to be paid yearly by the States for the support of the General Government. This sum was apportioned to the different States according to population and wealth, the sum apportioned to the State of the West, embracing the Spanish provinces of Sonora and Sinaloa, being \$53,125. Under this law grants or sales of lands were made in the State of Sonora from 1824 down to the time when the system was changed by legislative enactment. \* \* \*

“On the 20th of May, 1825, the constituent congress of the free, independent, and sovereign State of the West passed provisional law No. 30, regulating the system of *selling the public lands*.

“Under these provisional regulations the prices under which the public lands could be sold were graduated according to the location and quality of the land. The quantity allowed to one individual was limited to four square leagues, unless the applicant could satisfy the government that he required more for the use of his stock.

“Under this provision of the law the State of the West, in making grants or sales of land, continued the system that had been established by the Spanish government. The same formalities were observed. The lands were surveyed, valued, published for thirty days, and at the end of that time were sold at public auction to the highest bidder, the treasurer general of the State occupying the same position under the State government that the intendente did under the Spanish government. Between the time when grants ceased to be made within the jurisdiction of the intendencia of Sonora and Sinaloa by the authorities of the Spanish government and the time when they were made by the authorities of the ‘Estado del Occidente,’ under the law of the general congress of 1824 and the provisional law of 1825, \* \* \* the granting power was exercised by an officer entitled *comisario general provisional de hacienda credito publico y guerra*, whose headquarters were generally at Fuerto, a town in Sinaloa, near the northern boundary of the State, as shown by the records of the times.”

XIV. It was not until 11th July, 1834, that the laws of Sonora required an applicant for the purchase of lands to establish by three witnesses that he had the means with which to stock the lands.

It was not until January 4, 1813, and under a decree of that date that the Crown lands of Spain were offered for sale to the subjects of the kingdom in fee-simple under a general system of administration. Before that time such grants were by acts of royal grace, which were often subject to revocation. (Hall, Mex. Laws, §§ 89 and 90.)

This decree was a concession to the people, made as a peace measure, while the revolution under Miguel Hidalgo was in progress. The concession was *to the people from the Crown*, and they never surrendered it to the Republic. It was administered at Guadalajara by an intendencia for each of the western provinces, and was never under the jurisdiction of Viceroy O'Donohugh.

The turbulence of the times prevented an active resort to the advantages of this great concession of the Crown, by the people; still a number of purchases were made by Mexicans from their States. One of the oldest of these was made by Ignacio and Eulalia Elias as early as the 1st July, 1827.

Such a title as was sold to Elias and his sister Eulalia—paid for and held in possession by them and their devisees, successors, and assigns for 68 years, without question by the Mexican government during 26 years, or by the United States for 42 years—is deserving of some respect for its antiquity and might safely be upheld merely by prescription.

XV. As to the honest integrity of its ownership by Ignacio Elias and his sister Doña Eulalia Elias, no doubt can remain in the mind of any one who will read the last will of Curate Don Juan Elias and the disposition he made of his half of the movables on the Babacomari rancho and the uses to which it was dedicated. There is no possible impeachment

of their honesty in their dealings with this land. (See Record, p. 102, folio 169.)

The consideration paid for these lands by the successive vendees is a large sum of money, and their conduct in these transactions is not even the subject of criticism.

XVI. After the denial by the United States of the constitutional power of the State of Sonora to dispose of these lands, which is discussed in the foregoing pages, the question is raised, in this and other cases pending in this Court, whether the decree of Santa Anna, as president and dictator of Mexico, made on the 25th of November, 1853, annulled and destroyed the title of the Eliases to the Babacomari ranch granted, on their application, in 1827 and completed in 1832 by a deed in fee-simple and accompanied with *judicial possession* and actual occupancy.

The impression made by that decree upon the minds of the people and government was only a feeling of resentment, indignation, and disgust. On the 15th October, 1856, the constituent congress of Mexico declared this decree of Santa Anna null and condemned him and his ministers to personal responsibility, in their estates, for all the damage it had caused. It was denounced as a crime.

Santa Anna had then been president of Mexico five times without ever having served a full term. Others in turn had occupied that office, on some occasions for not more than a week. All these incumbents, whether their authority was *de facto* or *de jure*, attempted radical changes in the organic and general laws of Mexico, but their efforts were ultimately failures, and the constitutional republic has stood.

That the Government of the United States should now, through its courts, declare that Santa Anna in 1853 had *destroyed the constitution and abolished the Republic of Mexico* in order to open the way to the recovery of land sold to a Mexican by the State of Sonora in 1827 is a matter that deeply concerns our honor as a nation, our proper respect for a

sister republic, and our good faith in supporting the rights of Mexico and of Mexicans under our treaties of 1848 and 1853.

Such a decision, if made by our Supreme Court, must necessarily be of the deepest concern to the people of Mexico and to the States and the Federal Government of that "Republic of Republics."

The grounds on which such a decision is rested should be so clear and firm in justice, reason, and precedent and so supported in the history of republics that no room would be left to justify, even in the minds of the Mexican people, the traditional belief existing among them that in all his career the United States used Santa Anna as "a thorn in the flesh" of Mexico. There are some facts of history that are quoted in Mexico as justifying such a belief.

After the capture of Santa Anna at San Jacinto he was returned to Mexico in 1837 in a warship of the United States, and he then forcibly resumed the presidency. In the meantime Houston was elected and installed as president of Texas in October, 1836, and the independence of that Republic was acknowledged by the United States in March, 1837. Santa Anna held office as revolutionary provisional president from March to July, 1839. A new constitution for the Republic was promulgated in June, 1843, with Santa Anna as president. He was deposed and banished September 20, 1844, by Canalizo, who was deposed by Herréra in December, and his successor, General Paredes, assumed the presidency on December 30, 1845.

It was during the presidency of Paredes and while Santa Anna was in banishment in Cuba that our war with Mexico began. Early in that war the United States opened the way for Santa Anna's return to Mexico, when he again assumed the presidency and became general-in-chief of the army. After the capture of the city of Mexico, September 14, 1847, he resigned the presidency and went to Jamaica,

in April, 1848. He had no active participation in the negotiation of the treaty of Guadalupe Hidalgo.

In 1853 Santa Anna returned to Mexico under revolutionary auspices and was appointed president for one year. In that period he fomented another revolution and declared himself *president for life, with power to appoint his successor*, and with the title of "MOST SERENE HIGHNESS." He surely was most cool, if not most serene. The revolution of Aguilla followed, led by General Alvarez. Santa Anna signed an unconditional abdication and went into exile at Havana. He returned to Mexico during the French invasion and was made grand marshal of the empire by Maximilian. He was then implicated in a conspiracy against that alleged empire and again left Mexico. In 1867 he made his last attempt to gain power in Mexico, but was taken prisoner at Vera Cruz and condemned to death, from which sentence he was pardoned by Juarez, and he came again to the United States.

It is impossible to suppose that the romantic vagaries of such a soldier of fortune could impress their results in a permanent way upon the general land laws of a republic of sovereign States so as to overthrow them entirely and to destroy titles to land acquired under them, against the indignant protest of a nation that overthrew his power and expelled him from the country as an insurrectionist at the first moment that its military power could subdue him or drive him out.

In our own recent history much more regular and powerful actions taken by sovereign states under newly ordained constitutions were treated as nullities when the national constitution and laws resumed their actual authority. The precedents in our history do not sustain the doctrine that a *de facto* government has any retroactive power to destroy rights acquired under the permanent government *de jure*, within whose limits it may have been tolerated for a time on the ground of public necessity or of the *vis major*. Its

jurisdiction over all subjects is confined strictly to the period of its existence and to such acts only as grow out of the law of necessity.

But it will be unfortunate, to say the least, if our Supreme Court should feel compelled to hold that the decree of Santa Anna of November 25, 1853, was a repeal of the whole system of laws enacted by the Federal Congress and by the State legislatures back to 1824, disposing of lands and granting and confirming titles, and that it should be upheld as the lawful destruction of the most important and sacred vested rights.

We shall not escape criticism as a Government if such effect is given to his decree, *made while he was conducting the negotiations that resulted in the Gadsden treaty*. The \$10,000,000 paid by the United States to him for this territory, of which \$7,000,000 was paid on the 30th of June, 1854, before Santa Anna's expulsion from the presidency, was a large fund with which to promote the imperial designs of "His Most Serene Highness," the president for life, with power to appoint his successor.

XVII. It must be assumed, as it is clearly susceptible of demonstration, that the United States was not in sympathy with this treasonable ambition, this imitation of the usurpations of the First Consul. The decree of November 25, 1853, was made by Santa Anna one month after the American plenipotentiaries had signed the Gadsden treaty, and articles V and VI of that treaty saved the people of the ceded country from a scheme of monstrous ambition which was to add to the \$10,000,000 in cash the whole of the public lands in Mexico, including those that had been sold or granted by the States since 1825, as a fund for the subjugation of Mexico. A more imperial plan for concentrating all the sources of public revenue in the grasp of "His Most Serene Highness" was never laid by ambitious power seeking an imperial scepter.



Mexico, in her struggles to escape from royal and imperial power and to establish a republic, never had an antagonist who was shrewder, more persistent, or more unscrupulous than Santa Anna. She repudiated his plan of 1853 with hot resentment, and it remains for the United States, it seems, to sustain it as being lawful and obligatory on Mexico and as being worthy of our respect as a republic.

XVIII. The territory ceded by the Gadsden treaty was, as to the rights of property of the inhabitants, preserved in the same condition with those of the territory ceded in the treaty of Guadalupe Hidalgo.

In that treaty the utmost care was taken to provide for the preservation, protection, and security of "the grants of lands made by Mexico in the ceded territories. These grants, notwithstanding the suppression of the tenth article of the treaty, preserve the legal value they may possess, and the grantees may cause their legitimate titles to be acknowledged before the American tribunals."

"Conformably to the laws of the United States, legitimate titles to every description of property, personal and real, existing in the ceded territories are those which were legitimate titles under Mexican law in California and New Mexico up to the 13th of May, 1846, and in Texas up to the 2d of March, 1846."

(See the treaty and protocol.)

These safeguards are provided in a protocol to the treaty of 1848 and were signed on the part of the United States by A. H. Sevier and Nathan Clifford, one of the great American jurists who once sat in this Court and was eminent for his learning and his high sense of justice. It is almost pathetic to recall, in the language used in this protocol, the apprehensions of danger to Mexicans, thus expatriated, from the possible effects of the many revolutionary changes in government and of rulers that had occurred in that country while struggling nobly for a free constitutional republic.

The titles to property that are protected under the treaty of 1848 "were those which were legitimate titles under the Mexican laws." "The American Government \* \* \* did not in any way intend to annul the grants of lands made by Mexico in the ceded territories, \* \* \* and the grantees may cause their legitimate titles to be acknowledged before the American tribunals." These are broad and solemn guaranties.

These are treaty rights, and they are valid, though they might even contravene the constructions we might otherwise place on Mexican laws and constitutions, or the international law or our ideas of justice or sound public policy. Neither were they left open to litigation in the courts of the United States as mere equities or rights of action. They might not prevail under the common law of England, or the civil law as it is interpreted by American jurists. They might not be perfect titles or perfect equities under the laws of the United States, or they might suffer from technical questioning as to the effect that frequent revolutions may have had upon them, but they were *legitimized* under the Mexican regime and were "*legitimate titles* under Mexican law" and usage, and as such the right to have them "acknowledged before the American tribunals" is a treaty right and not merely a right to recover them by the judgment of a court in a suit against the United States, with all its powers as a legislator or litigant.

A "legitimate title" under Mexican law may be and is quite a different thing from a perfect title under our common law or even a perfect equity in our chancery law.

XIX. When we came to negotiate the Gadsden purchase with "His Most Serene Highness" Santa Anna, we evidently shrank from allowing his guardianship of the Mexican people and doubted the integrity of his care for them, so we provided that his assumed power over the ceded lands and the people who owned them should be cut off by placing

them in the exact situation and putting them under the identical conditions that the lands and the people were left in by the treaty of Guadalupe Hidalgo, which had been concluded five years before the date of the Gadsden treaty. That situation antedated and excluded his power to dispose of these lands or the rights of these people by his ruthless disregard of Mexican constitutions and laws.

The fifth article of the Gadsden treaty is as follows :

"All the provisions of the eighth and ninth, sixteenth, and seventeenth articles of the treaty of Guadalupe Hidalgo shall apply to the territory ceded by the Mexican Republic in the first article of the present treaty and to all the rights of persons and property, both civil and ecclesiastical, within the same as fully and effectually as if said articles were again recited and set forth."

And, to cut off "His Most Serene Highness" Santa Anna from the power to sweep all lands and land titles into his treasury, there was added article VI, in these words :

"No grants of land within the territory ceded by the first article of this treaty, bearing date subsequent to the day (twenty-fifth of September) when the minister and subscriber to this treaty on the part of the United States proposed to the government of Mexico to terminate the question of boundary, will be considered valid or be recognized by the United States, nor will any grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the archives of Mexico."

The expatriated people and their lands within the limits of the Gadsden purchase were protected, as they were under the treaty of Guadalupe Hidalgo, *and the right of Mexico to change that status ceased on the 25th of September, 1853*, one month before Santa Anna attempted to convey all the public lands in Mexico into his official ownership and dominion. The United States fixed this date in the Gadsden treaty (September 25, 1853) as the period that should terminate

the power of Mexico to alter the legal status of the land, if not of the people, in the ceded territory.

Whatever power Santa Anna may have had over the constitution, laws, public domain, and land titles in Mexico on the 25th of November, 1853, he could not interfere with these matters in the ceded territories without a total breach of articles 5 and 6 of the Gadsden treaty..

The light thrown upon this question by the decisions of the court of private land claims is neutralized by the fact that they decided the matter one way in some of the cases before them and quite the reverse in other cases. It is "*lucus a non lucendo*."

XX. The present attitude of the United States towards the examination and allowance of grants of land made by Mexico in the ceded territory is different from its former manner of dealing with this subject. For the first time, by the act of March 3, 1891, the United States provided a tribunal that could make a conclusive "acknowledgment" of the titles of legitimate grantees of the Mexican government existing in the ceded territory in Arizona, as provided for in the protocol of the treaty of Guadalupe Hidalgo and in articles V and VI of the Gadsden treaty. This relief was provided nearly forty years after the cession. In this long interval of time the claimants were required to submit their claims for examination to the surveyor general of Arizona, who was required to submit his report to Congress, through the Secretary of the Interior, for ratification or disapproval. Congress wisely forebore to assume this purely judicial function, and the favorable reports of the surveyor general on Perrin's case and many others, along with the unfavorable reports made in some cases, were alike held in abeyance, and the grantees were thus refused the rights that were guaranteed to them in the treaties. In the meantime there was permitted to congregate on these lands numbers of desperate and lawless squatters, who in many instances slew

the agents of the claimants and the agents and surveyors of the Government in order to enforce their trespass with bloodshed.

Congress, in the act of March 3, 1891, has not only legalized this violent seizure of these lands, but provides that ten years' possession of them shall work forfeiture of the title of the legitimate owners.

The difficulty of proving a continuance of possession under such conditions is also construed by some of the courts as presumptive evidence of abandonment of the grant.

XXI. Perrin's claim, dating back to 1827 and instituted by Ignacio Elias and his sister, Doña Eulalia Elias, citizens of Sonora, of very high character and family connections, was presented to and decided, upon full proofs, by Mr. Wasson, surveyor general for the district of Arizona, and was referred for final action to Congress by the Secretary of the Interior.

It remained in committee, without any action being taken upon it, until Perrin was forced by the act of March 3, 1891, to go into court and litigate his title with the United States and with the outlaws, sheltered by departmental rulings, who held forcible possession of his property with arms and violence and are now set up by act of the law as being presumptively *bona fide* holders of the possession.

No plea is made here to shelter Perrin's rights because of the delay and obstruction thus put in his way by the Government, but the conscience of this Court of equity is appealed to that his title shall not be defeated on grounds that are technical merely; that do not affect the integrity of the acts of the Mexican authorities in making the sale of these lands, or of the original purchasers, or any of their assigns in buying them.

XXII. The act of March 3, 1891, creates a lawful court of equity, with full chancery powers to hear and finally deter-

mine these titles as between the claimants and the United States and to execute the decree, and, lest the inferior court should be dissolved on the 31st of December, 1895, or unless it might for any reason founded in justice become necessary, section 9 of this act provides that—

“On any such appeal the Supreme Court shall retry the cause, as well on issues of fact as of law, and may cause testimony to be taken in addition to that given in the court below and may amend the record of the proceedings below as truth and justice may require, and on such retrial and hearing every question shall be open and the decision of the Supreme Court thereon shall be final and conclusive.”

The fifteenth section repeals all existing acts for that Territory relating to the adjudication of land titles under the treaties with Mexico. The whole act confers and regulates jurisdiction of the courts, including the Supreme Court, in accordance with the jurisdiction and practice of courts of equity of the United States, a jurisdiction analogous to that of removing clouds from titles and of compelling conveyances, where the equity is perfect, and of reforming defects in titles, good at common law, arising from the neglect, ignorance, or clerical misprision of the officers engaged in making the grants.

Within the limits of the jurisdiction conferred, the powers of the courts, as courts of equity, are plenary.

The legal scope and basis of the adjudication to be made by these courts in these cases are “the law of nations,” “the stipulations of the treaties,” \* \* \* “and the laws and ordinances of the government from which it is alleged to have been derived, and all other questions arising between the claimants or other parties in the case and the United States.”

In the restrictions placed by section 13 of this act upon the character of the title that may be confirmed by the decree of the court it is provided that—

"No claim shall be allowed that shall not appear to be upon a title lawfully derived from the government of Spain or Mexico or from any of the States of Mexico having lawful authority to make grants of land."

In this provision the language of the statute conforms to the spirit of the treaties and expressly includes *titles acquired from the States of Mexico having lawful authority to make grants of land.*

From that language as well as from what follows in the same paragraph of the law a title issued by a State may be considered "legitimate" under the treaties, and it is the right of a claimant to have it "acknowledged before the American tribunals" if it was regarded in Mexico as one of the "legitimate titles under the Mexican law" up to the 25th of September, 1853. Then the act of 1891 provides that if the title was "not then complete and perfect at the date of the acquisition of the Territory by the United States the claimant *would have had* a lawful right to make it perfect had the Territory not been acquired by the United States, and that the United States are bound upon the principles of the public law or by the provisions of the treaty of cession to respect and permit to become complete and perfect if the same was not at said date already complete."

XXIII. Mexico never denied to Sonora the right to sell her lands to her people, either in practice or usage or by any declaration to the contrary, and she took the most solicitous care in these treaties that her people whom she was sorrowfully expatriating should have all their rights and equities respected by the United States as she would have respected them had not her poverty and distress compelled her to transfer their government into other hands.

Such is the law, the testimony, and the history as they are established in this case.

XXIV. This Court, in *Ableman vs. Booth*, 21 How., 525, say "the highest honor of sovereignty is untarnished faith." This doctrine, applied to Mexico in her dealings with Elias and his sister, would compel the governments both of Sonora and Mexico not only to confirm a title that was honestly purchased and paid for, but also to refuse to take any technical advantage which might be discovered in the imperfect regulations as to surveys or as to platting the grant or in surveying the same, which was the fault alone of the laws or regulations, or was attributable to the want of skill in the surveyor selected by the government; and *the equity powers* conferred by statute on the courts in these cases should not fail to cure such defects when they are within reach of equitable adjustment.

In the tardy effort of Congress to perform a duty enjoined by these treaties the jurisdiction and powers of the court of private land claims were greatly enlarged above those provided in any of the laws previously enacted for the settlement of Mexican land-grant claims. This was done to give full effect to the just doctrines established in many decisions in like cases by this Court, and the reference in the treaty of 1848 to the "Louisiana treaty" applies those decisions to these land claims.

XXV. The grant to the Eliases was a completed grant and a deed in fee was delivered to them by the treasurer general of Sonora, José Maria Mendoza.

United States *vs.* Moorehead, 1 Black, 227.

There was juridical possession that completed the acts of the alcalde surveyor in surveying and valuing the lands. It is the judgment of a competent officer that the purchaser of the land is invested with the lawful possession of the tract described in the survey.

The necessity, if it exists, for a further and more accurate survey to locate the grant on the ground and to demark its



precise boundaries does not impeach or affect the validity of the grant.

*McDonough vs. Millaudon*, 3 How., 693.

*Alviso vs. The United States*, 8 Wall., 337.

*United States vs. Vallejo*, 1 Wall., 658.

*Graham vs. The United States*, 4 Wall., 259.

The effect of a land grant in Mexico must be determined by Mexican law.

*Steinbach vs. Stewart*, 11 Wall., 566.

XXVI. The surveys in Mexico under all the successive governments have been made by private persons, or by *alcaldes* who had more or less skill as surveyors. There are no government surveys or surveyors except under special appointment; hence the designation of the location of a grant by the name of the place, or by the boundaries of adjacent grants, or by natural objects of a permanent sort, or by metes and bounds marked by crosses, heaps of stones, or built-up monuments, were not only common, but were almost universal in the desert land of the north of Mexico, along the Gila, Colorado, and San Pedro and other water-courses, and swamps (called *sienegas*). In Perrin's case all of these methods of description were used, and fourteen landmarks are given and perfectly identified. The starting point of the survey is a well-known *sienea* or pond on the rancho then well known as the place named "San Ignacio del Babacomari," in the presidio of Santa Cruz, being the vacant land adjoining the Rancho San Pedro. These landmarks are stated in the paper furnished by Mr. Hopkins, and, in connection with the sketch he has given of them, they are easy to be understood.

In a country where there are so few springs, ponds, swamps, and tanks of water and so devoid of forest trees, and where the hills were so distinguishable and were so carefully placed and noted as features of the topography in

the valley of the Babacomari creek, adjoining San Pedro ranch, there could be no real difficulty *as to its location*. Subsequent surveys made recently by Mr. Roskrige located every one of these natural objects, and the photographs in evidence show the heaps of stone that still mark the boundaries at the various points made in the survey of the alcalde and his assisting witnesses, all of whom were acting under oath.

The proceedings of the survey are set forth literally, as they occurred, in the expediente and final title papers, and the deed recites that the grantees "*are to subject and limit themselves to the land, its appurtenances, metes, and bounds set out specifically in the proceedings of the measurements hereinbefore set out.*"

This deed was issued upon a report made by the attorney general on the 20th of December, 1828, to the treasurer general as follows :

*"To the Treasurer General :*

*"This expediente contains the survey of 8 sitios of land for breeding horned cattle and horses, executed by the alcalde of Santa Cruz, in the places of San Ignacio del Babacomari. I find nothing in the proceedings to prevent adjudication of the land to the petitioners, unless it be that the quantity exceeds that mentioned in article 21 of the decree of 20th May, 1825; but if your honor is satisfied as to the requirements recited in the 22d, I am of opinion that the land be sold to the denouncers if there should be no one willing to pay a higher price for the same."*

Under this law of Sonora of May 20, 1825, the government, acting by the treasurer general, could grant more than four sitios (square leagues) of land to one applicant if satisfied that he required more for the use of his stock. To obtain the advantage of this provision of law the two Eliases—Ignacio and Eulalia—joined with Don Rafael Elias, Captain Ignacio Elias, and Don Nepomucena Feliz, in the denunciation (claim as being vacant) of "the vacant tract of land

adjoining the rancho of San Pedro, situated in the jurisdiction of the presidio of Santa Cruz, as far as the place Tres Almos." Said denouncers petitioned for certain tracts of this large area, either jointly or separately. Ignacio Elias and his sister Eulalia jointly petitioned for the place called Babacomari, but did not limit their claim to four sitios each.

The evidence in this case proves that excellent reasons for this claim in this form existed, *which were of advantage to the government as well as the petitioners*. They were the following: (1) The tract of land was only fit for grazing; (2) Babacomari creek ran through almost its entire length; (3) it had springs at both the eastern and western boundaries and a sienega near the center; (4) it was nearly surrounded by mountains, so that no other grazing ranch was really possible in the valley of the Babacomari, and (5) it was in a desert region that was infested with Yuma and Apache Indians, who were savage, warlike, and implacable. It required a strong military force to hold the ranch; so much so that the United States, after the cession of this country, was compelled to erect a fort—Crittenden—within a few miles of Babacomari to shelter the few people who lived in the surrounding region.

Sonora had a strong motive to have that great area of desert country under the protection of this strong combination that jointly undertook to protect this frontier from those savages.

If there could exist sound reasons of public policy for making these grants in larger bodies than four sitios each, they were abundant and were wisely and patriotically consulted by the government of Sonora when it sold the Rancho Ignacio del Babacomari to the Eliases by metes and bounds without having required accurate measurement of the eight sitios. They were surveyed by unskilled men, selected by the government, with a mariner's compass, and were measured by men on horseback, after a fashion, where the

ground was smooth, and computed (guessed at) in the places where it was broken. This would have been a most uncertain and faulty survey if actual measurement of the land had been attempted or had been required by the government, but it was not. The facts were all faithfully stated in the report of the *alcalde*. That report was considered and commented upon by the attorney general, and it was considered *and adjudicated* by the treasurer general, who confirmed it, and he executed the deed conveying the title according to the uncertain and crude measurement and the metes and bounds as they were described by natural objects and by artificial monuments, as these defects were set forth in the careful report of the *alcalde*.

That was the Mexican way of disposing of the lands in their desert regions to induce men to enter upon hazardous pursuits in a region beset with savages, and that is enough to make such a survey the basis of a "legitimate title under the Mexican law."

It is also enough to form a basis for an adjudication which will fully and fairly meet our pledge in the protocol to the treaty of 1848 that "the American Government, by suppressing the Xth article of the treaty of Guadalupe, did not in any way intend to annul the grants of lands made by Mexico in the ceded territories."

It may be well added that the Mexican way of surveying such regions, under such circumstances, is better than our way of cross-barring them with rigid lines that have no reference to their utility.

XXVII. The lines of this grant have been ascertained by triangulations from the known and unmistakable objects indicated and described in the report of the *alcalde*, made in October, 1828, and have been compared and platted in connection and in correspondence with the United States Government surveys. There is no real uncertainty about them.

Mr. Flipper has conveniently criticised the courses and bearings stated by the alcalde in his report of his compass-work in making the survey, and he seems to fancy that he has demonstrated that it is absurd and cannot be read or followed. Mr. Flipper has simply been misled by an incorrect translation of those statements, or by the illiteracy of the surveyor. The surveyor general found no such difficulty when this claim was pending before him. The courses, correctly translated, lead from the central point of the survey, at the sienega of Babacomari, directly to the natural objects and the monuments described by the alcalde surveyor in his report of the facts touching the survey, and all those objects remain in their proper bearings to this day and indicate with reasonable certainty the location of the grant and all its exterior borders. In seventy-five years no other grant is found to conflict with this.

XXVIII. Mexican surveys are made under a system that differs radically from ours. Our surveys are first made and mapped by the Government before the land is put on the market. They are located, measured, mapped, approved, and recorded, and they then become the exact legal definition of the grant, which is made with sole reference to the maps, by numbers. Until all this final adjudication of boundaries is completed a private person cannot get a title. If more or less than the proper number of acres is found in any legal subdivisions of lands thus ascertained, the gain or the loss is the purchaser's. The survey and the patent are a final and conclusive adjudication as to the location and area of the land, binding the Government, the purchaser, and the courts as a judgment binds them.

*Stone vs. United States*, 2 Wall., 525.

*Marquez vs. Frisbee*, 101 U. S., 473.

*Maguire vs. Tyler*, 1 Black, 195.

In Mexico, there being no general system of land surveys, the location and boundaries of each grant is made separately under the supervision of a *judicial officer*, an *alcalde*, who is authorized by the State to make the survey of the particular tract. The survey may embrace any quantity of land, from one vara to eleven leagues. Notice of the survey is given to the neighboring proprietors that they may object if they see fit or assert any adverse claim, and this brings the government, and all claimants before the *alcalde* as a *judicial officer*, who gives public notice of the place of assembling and the day when the survey will be made. All the assistants are duly sworn and the *alcalde* keeps a complete record of the proceedings each day during the survey. He adjudicates the survey and reports his judgment to the attorney general. He also adjudicates it and reports his judgment to the treasurer general. He also adjudicates, and, if he confirms the survey, the land is then publicly offered for sale by the public crier on three several days, and the *junta*, consisting of three public officers, adjudicates the sale and confirms it. The purchase-money is paid into the treasury, and thereupon the treasurer general adjudges the title to the purchaser in pursuance of the survey.

In these proceedings there is much more of judicial hearing, action, and decision than there is under our system, yet our adjudications by ministerial officers as to the acres contained in a subdivision of lands, whether the same is stated truly or falsely in the survey, is held to be final and conclusive.

Is there any sound or safe reason why we, in judging of a "legitimate title" under Mexican law, should not give validity to it when it has passed under four separate adjudications by different tribunals and has been confirmed by each? The identification of the tract of land, by location, name, and boundaries, with the tract described in the petition, survey, confirmation and sale, is complete and unmistakable, and if the eight sitios of land therein described as

a sort of framework of the survey contain a great excess of land, yet if there is no fraud, no overreaching, no concealment, no violation of the public policy of Mexico, to vitiate the adjudication, the sale, or the deed of final conveyance, the conveyance is valid. Mexico treated it as being valid for 28 years, and would not, could not, now annul this conveyance if it still owned the country. The United States has not objected to its validity for nearly forty years, since the Gadsden treaty, and can only do so now by denying to the claimants the benefit of adjudged and settled principles of law, which we apply in our own public-land system, as is shown in the cases above cited.

XXIX. Here are boundaries, fixed by solemn adjudications of sworn officers, made judicially, in a controversy between Sonora and two of her citizens, and located by permanent and natural objects, the calls for which in the survey are carefully, clearly, and unmistakably set down in the record of the survey made and certified by a judicial officer, his assistants also being under oath. This is not only "legitimate" under Mexican law, but it is strictly legal and conclusive under the laws of the United States.

In *Morrow vs. Whitney*, 95 U. S., 551, it is held that, in ascertaining boundaries of surveys or patents, the rule is that wherever natural or permanent objects are embraced in the calls these have absolute control and both courses and distances must yield to their influence.

The supreme court of California has made most careful and learned examination of these questions of survey as they have arisen in Mexican land-grant cases. Almost every Mexican land grant in California presents these inquiries. Every phase of such questions appears to have been considered by that court, and the principles settled in those cases fully justify the position that the grant or sale of the place Ignacio del Babacomari is valid. The following citations, in addition to the decisions in the Supreme

Court of the United States, are relied upon as fully and clearly establishing the validity of this conveyance:

"Natural or artificial monuments, as a rule, will control courses, distances, and quantity."

10 Cal., 590; 12 Cal., 148; 22 Cal., 497; 24 Cal., 436;  
26 Cal., 616; 28 Cal., 175; 29 Cal., 172; 30 Cal., 480;  
32 Cal., 220; 34 Cal., 334; 37 Cal., 432; 38 Cal., 481;  
39 Cal., 612; 42 Cal., 327; 43 Cal., 390; 45 Cal., 273;  
47 Cal., 52; 50 Cal., 333; 51 Cal., 128.

"False or inapplicable clauses in contradictory description repugnant to interest, will be rejected if enough remains to identify."

25 Cal., 297; 27 Cal., 58; 34 Cal., 624; 35 Cal., 152;  
36 Cal., 606; 37 Cal., 432; 41 Cal., 264; 47 Cal., 52;  
66 Cal., 16.

"In case of clear mistake or absurdity, an inferior means of location will control a higher one."

10 Cal., 590; 34 Cal., 334; 36 Cal., 606; 38 Cal., 481;  
44 Cal., 132; 47 Cal., 67; 55 Cal., 567; 58 Cal., 306;  
66 Cal., 16.

"Intention governs."

10 Cal., 590; 12 Cal., 212; 16 Cal., 230; 18 Cal., 138;  
25 Cal., 297; 29 Cal., 386; 32 Cal., 220; 34 Cal., 334;  
35 Cal., 152; 36 Cal., 606; 37 Cal., 432; 38 Cal., 481;  
44 Cal., 132; 47 Cal., 526; 55 Cal., 567; 58 Cal., 306.

"Description by name may control erroneous description by metes and bounds."

44 Cal., 132.

"Quantity may control name."

47 Cal., 67.

"Land must be as near rectangular as possible if courses are not specified."

25 Cal., 142-143; 66 Cal., 379.



XXX. The interest of Mexico in the intrinsic value of those arid, desert lands in Arizona was so trifling in comparison with her vital public policy of establishing a barrier against the incursions of the savage Indians then dominating the northern frontier of Sonora, that it is not "legitimate" that we should now hold that an excess of acres of land within the calls of the deed to these grantees should prevail to defeat the grant, when both the courses and the distances stated in the record of the survey are compelled to yield to the natural and permanent objects embraced in the calls.

Higuera *vs.* United States, 5 Wall., 827.

The motive of the Mexican policy of pushing settlements up to the northern frontier of Sonora in the early days of the Republic and in maintaining them there by large grants of land in that quarter is illustrated by the requirements of the condition subsequent imposed on those grantees, that they should continue to occupy the lands except when they were interfered with by public enemies. The grantees became public servants to sustain this policy and deserve to have all the land they got.

In grazing lands that are not fenced and are never expected to be enclosed, the pasturage of adjoining lands is as available to the stock-grower as those included in his deeds, and it was a very inconsiderable matter to any one whether the place called the Rancho Ignacio del Babacomari contained more or less than eight square leagues.

"The positive qualification and precise condition that they have to keep the said sitios occupied, settled, and protected, the same not to be abandoned or deserted nor left unprotected for any time whatever," was not such a dependent condition as worked a forfeiture of the title to the State *ipso facto* if the condition was not performed. It was a duty to the State based on the consideration of the grant, for the performance of which the State had the right and power to hold the grantee responsible, "and if the same should be

abandoned totally for the space of three consecutive years and there should be some one else who should denounce the same, in such an event the same shall be pronounced vacant and shall be adjudicated anew to the highest bidder." The grant was to stand. It did not revert, but a new bidder was to take it. This was a forfeiture that could only affect the title after office found. As there has been no such proceeding (and there could not be in the United States to enforce a forfeiture to Mexico), the supposed condition subsequent could not in the least affect the title of the grantees or their assigns. The title stands in the exact condition in which it was found at the date when the Gadsden treaty went into effect. It had not then been adjudicated as being forfeited to another purchaser at a public bidding and could not have been so adjudicated until some citizen of Mexico had first denounced the land as being forfeited by abandonment and had offered to bid for it. If such proceeding had been instituted, it could not have prevailed on the evidence in this record. It is confiscation and not a forfeiture for condition broken that this law provides for.

*Gonzales vs. Ross*, 120 U. S., 605.

XXXI. Nothing is shown in the nature of an abandonment or desertion of the grant, and even the occasional absences of the herdsmen and others in charge of the ranch are excused by the further provision in the deed, "excepting, as is just, in those cases in which the abandonment is due to the notorious invasion of enemies and only for the period of such occurrences." Each of such invasions, however, would excuse an abandonment for the period of three years from its occurrence. The State also assumed the duty of protecting these grantees "in the quiet and peaceful possession to which they are entitled by legitimate right." This was not done. The Indians were constantly on the warpath, and Elias had to march bodies of armed men to his rancho in order to mark and brand his cattle and take them to market.

The evidence shows that he supplied food to the people of the surrounding country and to the troops in that region of country, and was of great advantage to the public. Our own experience in the effort to save Arizona from the outbursts of the Apaches and Yumas shows the great difficulty and extent of the task, to which Mexico was wholly inadequate. The millions we have spent in quelling the partisan wars of Geronimo alone and our failure for many years in suppressing and capturing him are a full answer to any suggestion that Elias could have continuously held peaceable possession of Babacomari from 1828 to 1853.

XXXII. Under the constitutions of 1824 and 1836 the power to dispose of the public lands not in the Territories was not defined in the national organic law of Mexico. The right of property in the public lands within the States was left to follow the powers of sovereignty, except for the purposes of colonization by grants to families of immigrants, or to *empressarios*. The constitution of 1836 contains provisions, in the sixth law, article 1, that authorize changes to be made in any of its articles after six years. It was, in fact, provisional and was intended, like the French consulate, to give repose to the country until the people could consider some grave questions of reformation and reconstruction that affected the peace and permanent welfare of the Republic. It did not abolish the Republic, but suspended the functions of some of its departments and officers until these reforms could be considered.

In doing this the central powers were declared supreme in the several departments—the legislative, conservative, executive, and judicial departments separately—but these were not united or aggregated into an “entity” which was in itself a sovereign government.

The constitution of October 4, 1824, does not declare that the national government established by it is either *sovereign* or *supreme*. It only declares that “The Mexican nation is

forever free and independent of the Spanish government and all other powers whatever," while the constitutive act of January 31, 1824, declares, in article 6, that "Its integral parts (the States) are free, sovereign, and independent in whatsoever belongs to their internal administration and government," etc.

In the constitution of 1857, in article 39, it is ordained that "The national sovereignty resides in the people. All public power emanates from the people and is instituted for their benefit. The people have at all times the inalienable right of altering or modifying the form of government."

The following is the limitation on the powers of the States and the Federal Government in the present constitution :

"Art. 117. The powers that are not expressly granted by this constitution to the Federal Government are understood as reserved to the States."

As the power to dispose of land belongs to sovereignty and was not expressly granted to the Federal Government, and as sovereignty resides in the people and all government is for their benefit, and as this power was "reserved to the States," there is no ground for claiming that the lands in the States belong to or are subject to the disposal of the States.

But if clause 24 of article 72 of the present constitution gives Congress the power "to fix the rules to which the occupation and alienation of the public lands ought to be subject and the price of said lands," and if this power may be thus exercised within the States, it does not follow that grants previously made by the States were *ultra vires*.

The principles declared, as above quoted from the constitution of 1824, are quite to the reverse.

XXXIII. The most that can be justly said about the situation is this: That a dispute existed as to the ownership of the lands within the States that no constitution had ever ex-

pressly settled, and it was manifestly important that it should be settled.

In the constitution of 1875 all public lands *en masse* were made subject *for the first time* to rules to be fixed by Congress, but neither the rules nor any basis for them were stated *in the constitution*. That was left open for the congress, all of whose membership came from the States, in the senate, and from the people, in the chamber of deputies, who would, of course, care for the interests of the States.

The purpose of all this new arrangement was to compose the differences between the States and the Federal Government as to their respective interests in the "rentes"—the proceeds of the sales of the public lands—not in the sovereign ownership of them. That was a matter, long in dispute, growing out of the powers of the Federal Government over the national question of colonization reserved in the constitutive act of August 18, 1824, which extended to the control of lands within the States, for that purpose.

The States really settled for this claim and paid for it in the assessments made upon them in the decree of the constituent congress of the 4th of August, 1824, and they are virtually required to pay for their vacant lands again by the law of July 20, 1863, and of May 30, 1868, whose article 5 fixes as the revenue of the Federal Government derived from the sales, "*the half of the proceeds of the sale, lease, or exploitation of the public lands, all in the Republic (including the territories and the confiscated church lands), the other half being for the benefit of the States in whose territory they are situated.*"

This was a compromise that the States could well afford to make, as well for the settlement of a very sore question as for the advantage of their revenue. The increase of the value of vacant lands under the regime of Juarez and Diaz was a vast gain to the States that came in under this law of May 30, 1868, for half the proceeds of the sales of all the vacant lands in Mexico.

This arrangement was not in any sense retroactive, but had it been it could not affect rights that were withdrawn from the jurisdiction of Mexico by the Gadsden treaty; yet the argument that is deduced from it proves that in Mexico *it required a change in the national constitution* to give to the Federal Government the *jus disponendi* over the vacant public lands in Sonora.

XXXIV. The surveyor general, Mr. Wasson, found no difficulty in ascertaining the definite location of the Babacomari grant, though he confined its measurement to eight sitios or square leagues of land.

In this he overlooked the fact that the report of the Attorney General made upon the survey of the alcalde and his field-notes called for a larger area of land, and the further fact that the law gave to the officers who located and confirmed the grant the right to enlarge the area granted when it was needed for the purposes of stock-raising. (See Report of Felipe Gil, Record, p. 77, and Law of Sonora No. 30, May 20, 1825.)

The intention was to obtain a rancho with water for raising horses and cattle. There was not then in Mexico, if there is now, any law that required all measurements of lands when offered for sale to be made in square leagues. The Babacomari rancho occupied a small valley of the creek of that name, with high and arid lands on three sides of the area, and, the intention being to secure the running water, the lines were projected with that view, which would have been frustrated if each league was required to be square. In many cases grants have been confirmed, properly, where the lands were bounded on all sides by former surveys which had been deeded to private owners, and it was impossible to find space between them for a square league of land.

XXXV. Mr. Flipper, who is a "squatter" and is identified with them in these cases and questions, is a standing witness for the Government in nearly all of these cases. He proves broadly and at large for the Government and is equally expert, active, and decided on questions of survey, the reading of the compass, the translation of laws and documents, the forms of proceeding in land sales in Mexico, and in his learning in the interpretation of laws. His opinions would settle every question in favor of the Government of the United States as a claimant of these lands and the squatter as the beneficiary, and would relieve our country of the delicate duty of deciding, in its own courts and under its own laws and for its own profit, these questions relating to property rights under treaties of cession made to it.

The appellant cannot accord to Mr. Flipper infallibility or impartiality in these matters. He is expressly contradicted as to the statement that the proceedings in Elias' grant were not on stamped paper. While he denies the possibility that the Elias survey can be located on the ground by the field-notes, Roskrige, who surveyed that whole country, testifies that he without difficulty found thirteen out of fourteen monuments and natural objects described and located in the calls of the survey of the alcalde.

Flipper also found monuments in the places where the survey located them, the same that are pictured in the photographic exhibits in this case, and then he brushes them away with his airy opinion that they were Indian monuments. The hills crowned with oak trees and others with stones, and a high hill that was isolated from all others; the hot spring with the west center monument near it; the cottonwood tree in the little valley were all seen by Flipper and could not be brushed away with an opinion. So he pretends to have found two hot springs, at one of which, several miles from the other, there was no monument, and he states that as a fact, in which no one else sustains him, to prove that a hot spring in that arid country is too indefinite

a thing to stand for a landmark. Flipper is the only person who attempts to discredit the alcalde's survey and field-notes, and his chief point is that he could not follow the reverse lines or "back sights" of the alcalde surveyor, as he described them in his field-notes, in a demonstration on a blackboard.

Flipper could not deny that the courses taken and recorded by the surveyor would lead to the landmarks and the monuments if they were followed; but he finds that the alcalde, by using one letter for another in his imperfect description of the "back-sight" course, made a confusion in the survey.

It was not necessary to the accuracy of the survey that the alcalde should state the reverse direction of the courses on which he made his survey and measurements, but in doing so he confused Mr. Flipper so greatly that he could not see anything "honest or of good report" in any feature of Perrin's case.

Mr. Flipper visited Hermosillo to find flaws in the Babacomari grant, and, finding none of any importance, and misstating some he imagined he had found, he visited the ranch to look for defects in the survey. He found the same "calls" in the document at Hermosillo as those in the document in evidence before the court. He says (Record, p. 50), "Some of the calls are impossible," meaning, as his statement shows, that some of the reverse courses, back sightings, are in directions that are tangents to the "courses" as they are stated in the field-notes, but he found the rancho and the creek Babacomari and the sienega, which is the central point of the survey, and three piles of stones 300 yards from it, on a line nearly east and west, 3 feet across and 8 x 8 inches, and he found "Monkey springs," and about 200 yards west of it he found a pile of stones on top of a hill, and a bald hill. Then, on page 54 of the Record, he broke away from a plain question, on cross-examination, in hot temper, saying, "It is impossible to know what that



call means. Your translator did not know what it meant. It has been corrected in your translation a dozen times" (which is not true); "'southeast quarter southwest.' You have got to jump from the east and pass the south cardinal point to get to the west. It is impossible," showing that the difficulty is in the translation of the field-notes of the alcalde, or in Mr. Flipper's interest in the defeat of these grants.

The next question put to him is :

"Q. You, in fact, went to the east center monument, as set out in Roskrugs's survey ?

"A. Yes, sir.

"Q. Did you look at that natural object *as called for in the expediente* ?

"A. It calls for a rocky hill. There is a rocky hill there."

He says he "went over the center line." How did he find that line? And he went to no other place or corner or monument except as above stated. (See Record, pages 54 and 55.)

Even this meager examination by Flipper confirms Roskrugs's statements and his map so far as it goes, and, standing by itself, locates the grant.

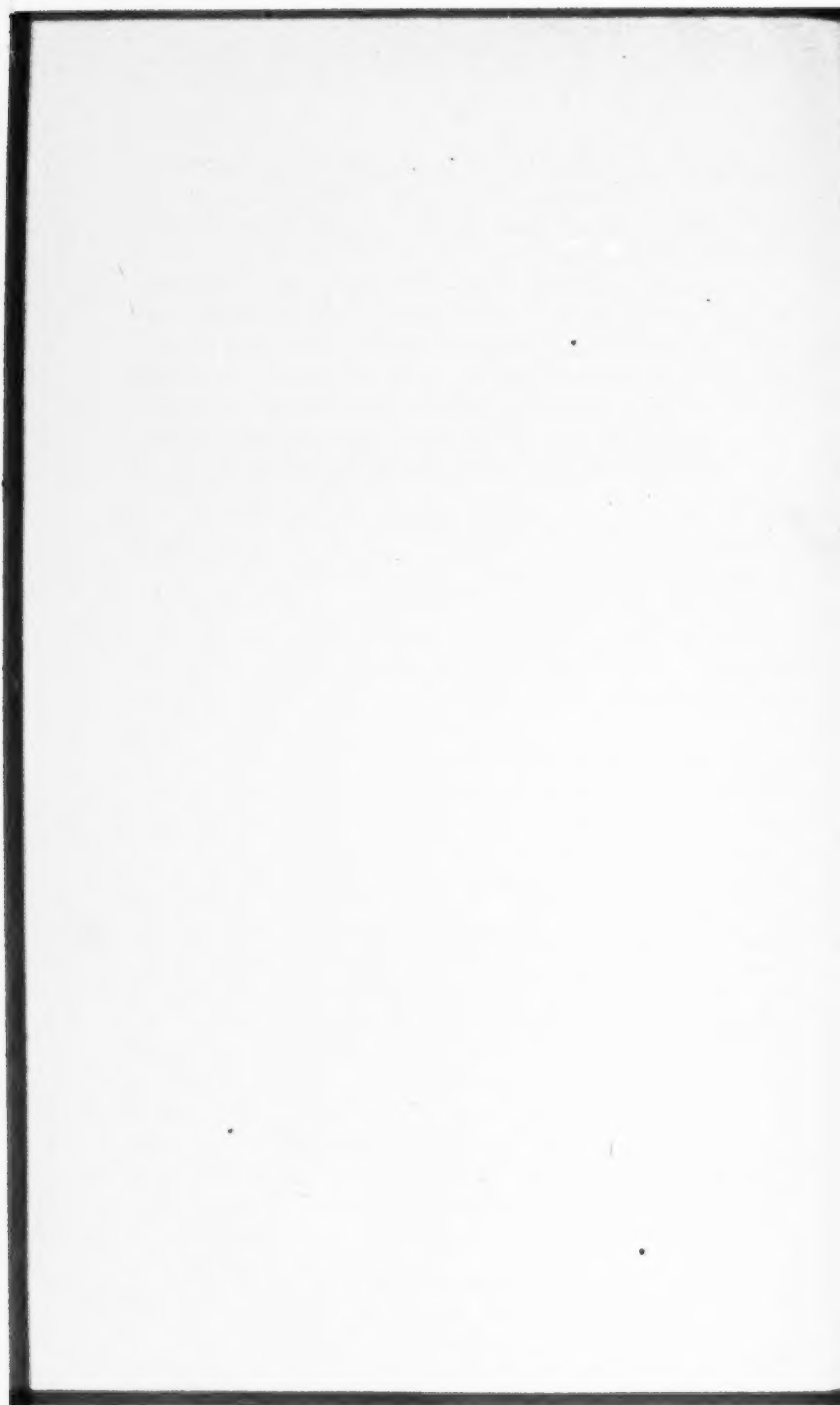
A competent and honest surveyor can take this expediente and have Flipper to point out what he saw of these monuments and natural objects, and he can completely measure and locate every line of it upon the ground. Flipper did not wish to do this and turned away when he saw that the sienega and the hot spring and the bald hill and the monuments proved the survey historically, and then he began to find flaws in the courses and in the translation of the field-notes of the alcalde. Roskrugs found no difficulty in locating the survey as it was originally made and in measuring it by triangulation. It is much larger in area than eight sitios, but the monuments and natural objects described in the calls are immutable in the declaration and

proof that this is the land adjudicated as being sold and conveyed to Ignacio and Eulalia Elias. Mexico would not, nor could not, have rightfully claimed the surrender of a foot of it as an over-grant.

Away from the little valley the country was a desert. Within it, Indians and outlaws have marauded upon the Eliases and their successors, and the cost of human life expended in its protection has earned it twice over had it been a conquest won by arms instead of a purchase at public sale paid for under the guaranty of two great powers that the owners should enjoy it in peace and security.

JOHN T. MORGAN,

*Attorney for Appellant.*



**Supreme Court of the United States**

**OCTOBER TERM, 1907**

**No. 30**

**ROBERT PERRIN, APPELLANT,**

**THE UNITED STATES, THE CITIZEN LAND AND  
CATTLE COMPANY, ET AL.**

**ADDITIONAL ARGUMENT OF JOHN T. MORGAN,  
ATTORNEY FOR APPELLANT.**

**JENN & DETWEILER, PRINTERS, WASHINGTON, D. C.**

IN THE  
**Supreme Court of the United States.**

**OCTOBER TERM, 1897.**

---

*No.* \_\_\_\_\_

---

ROBERT PERRIN, APPELLANT,

vs.

THE UNITED STATES, THE CRITIDEN LAND AND  
CATTLE COMPANY, ET AL.

---

**ADDITIONAL ARGUMENT OF JOHN T. MORGAN,  
ATTORNEY FOR APPELLANT.**

---

1. As to the right of the appellant to hold this land against the United States, and as to the certainty and definiteness of the location of the tract, the real question is whether "*the place named San Ignacio del Babocomori, situate in the jurisdiction of the presidio of Santa Cruz,*" "*adjoining the rancho of San Pedro,*" was segregated from the public domain in Mexico, and whether this was done by proceedings for the benefit of Mexican citizens instituted and completed "*according to the laws and ordinances of the government*" of Sonora before the 25th day of September, 1853.

2. If the land was, in fact, segregated from the Mexican public domain and had in equity and justice passed into private ownership, but the title was not "complete and perfect at the date of the acquisition of the territory by the United States," this state of facts gives the United States courts jurisdiction; and if the right acquired was such as "the claimant would have a lawful right to make perfect and complete had the territory not been acquired by the United States," then if "the United States are bound, upon principles of public law or by the provisions of the treaty of cession, to respect and permit to become complete and perfect if the same was not at said date complete and perfect," the title has not passed to the United States *under the treaty* except for the purpose of confirmation to the holder of the equitable title.

The powers conferred upon the courts by the statute of March 3, 1891, are very broad, but they would be useless for the purposes of justice and to execute the agreement between the two Republics as expressed in their treaties, *if they had been confined to the adjudication of the question whether a perfect legal title had actually passed from Mexico for lands granted or sold to her citizens whom she was about to expatriate under painful circumstances.*

3. The right to demand a "release" of the claim of the United States was made, by the treaties and the statute, to depend upon the right to have the claim of a Mexican made perfect and complete under Mexican "laws and ordinances" (if it was not already complete) had the territory not been acquired by the United States.

4. The state of progress that had been made towards obtaining a "title lawfully regular and complete" from Mexico, which would give our courts jurisdiction *to complete the title*, is not defined in these treaties or in our act of Congress; but the nature and scope of the powers conferred on the courts in section 7 of the act of March 3, 1891, clearly indicate the intention of Congress to confer upon them plenary equity jurisdiction in respect of all imperfect titles lawfully and justly derived from Mexico or Sonora in favor of *bona fide claimants*. Section 7 of that law is as follows:

"Sec. 7. That all proceedings subsequent to the filing of said petition shall be conducted as near as may be according to the practice of the courts of equity of the United States, except that the answer of the attorney of the United States shall not be required to be verified by his oath, and except that, as far as practicable, testimony shall be taken in court or before one of the justices thereof. The said court shall have full power and authority to hear and determine all questions arising in cases before it relative to the title to the land the subject of such case, the extent, location, and boundaries thereof, and other matters connected therewith fit and proper to be heard and determined, and by a final decree to settle and determine the question of the validity of the title and the boundaries of the grant or claim presented for adjudication, according to the law of nations, the stipulations of the treaty concluded between the United States and the Republic of Mexico at the city Guadalupe Hidalgo, on the second day of February, in the year of our Lord eighteen hundred and forty-eight, or the treaty concluded between the same powers at the City of Mexico, on the thirtieth day of December, in the year of our Lord eighteen hundred and fifty-three, and the laws and ordinances of the government from which it is alleged to have been derived, and all other questions properly arising between the claimants or other parties in the case and the United States, which decree shall in all cases refer to the treaty, law, or ordinance under which such claim is confirmed or rejected; and in confirming any such claim, in

whole or in part, the court shall in its decree specify plainly the location, boundaries, and area of the land the claim to which is so confirmed."

That section of the act would be superfluous if it did not apply to what we term perfect equities or equitable titles to lands, and if in connection with paragraph 1 of section 13 it did not include the power "to make perfect" grants of land that were not "complete and perfect at the date of the acquisition of the territory by the United States."

5. These powers thus conferred upon the court expressly include the jurisdiction and "full power and authority to hear and determine all questions arising in cases before it relative to the title to the land the subject of such case, the extent, location, and boundaries thereof, and other matters connected therewith fit and proper to be heard and determined, and by a final decree to settle and determine the question of the validity of the title *and the boundaries* of the grant or claim presented for adjudication, according to the laws of nations, and the stipulations of the treaties between the two countries.

Under these provisions of law the courts, whose "proceedings \* \* \* shall be conducted as near as may be according to the practice of the courts of equity of the United States," could not hesitate to *reform a deed or a record or a survey*, if need be, to make it conform to the truth, if that was necessary for the purposes of justice; nor would they hesitate to direct a survey, to amend or correct one, which was defective through the unskillfulness of a government surveyor, to the injury of a *bona fide* purchaser of lands at a sale made by the government. And in all such matters we



are bound to consider the state of the law and practice in Mexico in the disposal of lands and in the location and survey of lands in vast tracts of country inhabited by wild and savage bands of Indians.

6. Our treaties with Mexico provide for the security and the allowance by our tribunals of all vested rights of property held by claimants under Mexican laws, ordinances, and usages, whether complete or incomplete as to the muniments of title, including surveys, proceedings of land tribunals, and conveyances, and this without respect to what we call a perfect legal title or a perfect equitable title.

Nothing less than this full protection of the people, whose allegiance was being changed by compulsion, would satisfy the laws of nations, the stipulations of the treaties, the laws and ordinances of the government from which they were alienated, and the conscience of the American people.

This full measure of protection is to be guaranteed by the decree of our highest court, through a specific grant of jurisdiction, under these several heads, and it is further empowered to pass upon "*all other questions properly arising between the claimants or other parties in the case and the United States.*" To prevent a possible failure of justice, as it is discerned in the more perfect light of equity jurisprudence, the Supreme Court of the United States is given full power to allow amendments of the proceedings in the Court and extraordinary powers to obtain further evidence bearing upon any question as to which doubts may arise.

Congress has taken a broad and liberal view of the whole subject and has so provided that the Government shall acquire nothing under these treaties that in good faith belonged

to Mexican citizens when they became, by the act of the two governments, the unwilling inhabitants of a Government that most of them were embittered against.

7. No claim of the United States in conflict with an honest claim of a Mexican citizen based on a purchase and payment for property from Mexico or any State of that Republic and capable of a reasonable enforcement should be enforced by the Supreme Court of the United States when its "*release*" is the full measure of the decree that is proper to be rendered in the case.

8. This Court is not required to adjudicate that the title of the claimant is perfect as to all the world, but that it should be *released* from the power of the Government of the United States to dispose of the land. Although the claimant's title may be imperfect in form, yet if it is just, equitable, and capable of being made perfect in substance it does not pass to the United States by the treaty.

9. If the title to "the place named Babocomori" is lost to the vendee, it is clearly the fault of the Mexican authorities through whom that government has received a full price for the property, and, Mexico having sold it afterwards to the United States, neither government is liable to refund the purchase-money and interest to the honest purchaser. The loss falls on him alone. We cannot afford to take this land at that cost to the original purchasers, to which has been added at least \$30,000 in taxes and in subsequent sales to our own people who are innocent purchasers. This land has cost our citizens who claim it more than the price per

acre that the United States paid for the 45,535 square miles bought from Mexico under the Gadsden purchase.

10. This territory was purchased from Mexico for the sake of dominion. It was not a land speculation. It was not acquired by conquest, and the reservations made in favor of Mexicans are entitled to the same protection by estoppel and by the laws of equity and justice as if the parties to the sale and purchase were private persons.

11. In acquiring a title to this territory the United States did not acquire the sort of sovereign power of Mexico through which that government could arbitrarily refuse to complete a title that was just but incomplete. On the contrary, Congress requires it to be completed if it was lawfully derived from Mexico under an express treaty obligation and as an act of justice to be determined by decrees of our courts and to be by them executed.

12. Mexico, the vendor of the United States, did not sell any land that had been previously sold to a Mexican citizen for valuable consideration and by lawful authority. When the ownership of the land became a vested right, whether or not the muniments of title were complete or perfect, *that right was not intended to be destroyed by the treaty*, and all the laws of estoppel are made operative by the treaty in favor of the innocent purchaser to the same effect as if the two governments were private persons dealing with reference to the land.

13. Article VIII of the treaty of 1848 is made a part of the treaty of 1853 in the sixth article. It applies alike to

Mexicans who were then "established in territories previously belonging to Mexico" and "to Mexicans not established there" as actual inhabitants. As to both classes, that article provides the same protection for all rights of property. As to non-resident Mexicans, it provides that "in said territories property of every kind now belonging to Mexicans not established there *shall be inviolably respected,*" and as to all Mexicans the right of "retaining the property which they *possess* in the said territories" is placed under the inviolable guaranty above quoted.

14. Article IX of the treaty of 1848 was intended to express the same meaning that was expressed in article X, (which was stricken out), in the same terms that were used, substantially, in the French treaty relating to Louisiana, concluded April 30, 1803 (art. III).

In that article also, which is made a part of the Gadsden treaty, this express guaranty is inserted, that Mexicans "shall be maintained and protected in the free enjoyment of their liberty and property," &c. In the second protocol of that treaty it is affirmed that—

"The American Government by suppressing the Xth article of the treaty of Guadalupe did not in any way intend to annul the grants of lands made by Mexico in the ceded territories. These grants, notwithstanding the suppression of the article of the treaty, preserve *the legal value which they may possess*, and the grantees may cause their *legitimate (titles) (?)* to be acknowledged before the American tribunals."

Article V of the treaty of 1853 expressly applies, to the Gadsden purchase, the articles numbered 8, 9, 16, and 17 of the treaty of Guadalupe-Hidalgo, and secures to Mexicans

"all rights of persons and property, both civil and ecclesiastical, \* \* \* as fully and as effectually as if the said articles were herein again recited and set forth."

15. Under Mexican and Spanish laws the public domain *in the territories* was disposed of by grants, either for purposes of settlement or colonization or as a mark of public favor, while *in the States* the public lands were treated as "rentes"—sources of revenue—and were sold for money.

16. The territory acquired under the treaty of 1848 did not include any part of a State of the Mexican Republic, but the Gadsden purchase cut deep into the territorial limits of the State of Sonora.

This state of facts was provided for in the first subdivision of section 13 of the act of March 3, 1891. That provision gives the courts jurisdiction to adjudicate claims to lands the titles to which are "derived from the government of Spain or México or from any of the States of the Republic of Mexico having lawful authority to make grants of land," which means the power to dispose of lands.

This law of Congress executes the purpose of articles VIII and IX and of the second protocol of the treaty of 1848, and is obligatory on the courts as a legislative construction of those engagements of the Government and of the "rights of persons and property" included in "*legitimate titles derived from the States of the Republic of Mexico* having lawful authority to make grants of land."

Without this express statutory authority the courts would have to work out their power to confirm or annul titles derived from those States by an embarrassing resort to construction, if it really existed.

17. This statute covers sales of lands made by the States of Mexico. Conceding to the broader generic word "grants" its fullest effect, as it is used in the treaties, it would mean grants made by the "United Mexican States," as in the treaty of 1848, or by the "Republic of Mexico," as in the treaty of 1853. If this was the only source of the titles under which Mexicans could claim lands, such a construction would, as is claimed by the Government in this case, sweep away every land title in Sonora that had not been granted by the Republic, or by Spain.

This was the purpose of Santa Aña's terrible ukase, but our Congress annulled it or repudiated it in the act of March 3, 1891.

18. Sonora could, as proprietor, make grants of land or sales of land for a consideration in money, and it is a sale of land and not a grant of land that the court is now considering.

This state of the case is important to be considered with reference to article VI of the treaty of 1853.

That article is peculiar, in that it fixes a date prior to the conclusion of the treaty—the 25th of September—when the minister of the United States "proposed to the government of Mexico to terminate the question of boundary," as the date that should terminate the power of the Republic of Mexico to make grants of land.

The good faith of the Mexican government was seriously questioned by our insistence on this provision in the treaty.

This abundant caution may have been inspired by a feeling of distrust in the good faith of Santa Aña, who was then President, or, more likely, by the fact that the United

States had experienced great embarrassment in Florida in respect of grants made during the interval between the conclusion of the treaty of 1819 and its ratification by the King of Spain, and in Louisiana from like questions. (*U. S. vs. Arredondo*, 6 Peters, 706; *Foster vs. Neilson*, 2 Peters, 306.)

The grants of land mentioned in article VI of the treaty of 1853 were only such as *the Republic* had the exclusive power to make, and the provision that grants made before the 25th of September, 1853, should "not be respected or considered as *obligatory* which have not been located and recorded in the archives of Mexico" must relate to grants *made by the Republic and recorded in its archives.*

19. If Sonora had the right to grant or sell lands to Mexicans it must have had the right to locate the lands and to keep the record of the transaction in its archives. These are not the archives of the Republic of Mexico. Congress declares, in accordance with the treaties, that such grants were valid if lawfully derived from the States, and does not add that they are void unless they are recorded in the archives of Mexico. In cases free from fraud that rest on a title lawfully derived from Sonora, Congress in the act of 1891 empowers the court to confirm the grant without its having been recorded in the archives of Mexico.

20. The jurisdiction of the court attaches in this case, because Congress, in giving legislative construction and effect to these treaties, has provided that "legitimate titles" to land derived from the States of Mexico may be subjects of adjudication.

If location and registration are also requisites of a title

derived from Sonora this requirement is fulfilled by the fact that the original "matrix" of the "titulo" is found in the archives at Hermosillo.

As to this fact there is no dispute. The location of this land is established by a series of facts, partly of record and partly established by reference to natural objects, all agreeing in the specific designation of its actual geographical location on the face of the earth.

21. The "denunciation" of this tract of land was made in 1827, seventy years ago, as "the lands named San Ignacio del Babocomori, *situated* in the jurisdiction of the presidio of Santa Cruz," and the denouncement, being in writing, "was admitted, according to the law, on the 1st of July, 1827, and the writing of denouncement and the other proceedings in relation thereto are as follows."

22. The written denouncement and all the other proceedings were filed and made a record in the archives of Sonora as the "matrix" of the "titulo."

Then follows, in the proceedings, the petition of Ignacio Elias and his sister, Eulalia Elias, in the words following:

*"To the Treasurer General:*

"We, Ignacio Elias and Eulalia Elias, present ourselves before your honor, respectfully representing that, needing a tract of land for our stock, we denounce, *in company with Don Rafael Elias, Captain Ignacio Elias, and Don Nepomuceno Feliz, the vacant tract of land adjoining the rancho of San Pedro, situated in the jurisdiction of the presidio of Santa Cruz, as far as the place of Tres Alamos, obligating ourselves to pay to the nation the corresponding tax, with all other matters that justice may require, until the title and confirmation thereof shall be obtained; wherefore, your honor will be pleased to consider the vacant tract referred to, petitioned*



for; wherefore, we pray your honor to be pleased to order as we have prayed for, in which we will receive favor.

"ARIZPE, March 12th, 1827.

"In the absence of and at the request of—

"DON IGNACIO ELIAS.

"JOAQUIN ELIAS.

"EULALIA ELIAS."

23. In this petition no claim was made for any specific number of sitios of land nor lands of any particular shape or dimensions. What was claimed was "*a tract of land for our stock,*" and it was described generally as "the vacant tract of land adjoining the rancho of San Pedro, situated in the jurisdiction of the presidio of Santa Cruz as far as the place Tres Almos." It was made on behalf of three persons, so that *the general tract* had to be apportioned. The law limited to each person four sitios, *unless they should show that they needed more land for pasturage.*

24. On the same day, July 1, 1827, the petition and denouncement were referred to Nicolas Maria Cajola, the treasurer general of Sonora, who "thus decreed and signed" "that the alcalde of Santa Cruz will proceed in the matter under the authority which is conferred on him, without prejudice to a third party who may have a better right, first citing the colindantes (neighboring proprietors) to *the measurement, valuation, and publication* for thirty days consecutively *of the lands* referred to in the denouncement."

25. The alcalde was Alejandro Franco, constitutional alcalde of the presidio of Santa Cruz, who had for his assistant Ramon Romero, acting by special authority in the absence of a notary public, according to law. The name of

the alcalde was signed by Ramon Romero to the papers, evidently because the alcalde could not write his name, and it was attested with his mark.

26. He went to San Pedro on the 5th of October, 1828, "for the purpose of *measuring* the lands petitioned for by the petitioners."

*The land had been located in the petition* by a public geographical name and by the denouncement in writing, "which was admitted according to law" by the treasurer general of Sonora as "the lands *named* San Ignacio del Babocomori, in the jurisdiction of the presidio of Santa Cruz." In the caption to the "titulo" it is called "the place named San Ignacio del Babocomori," an admission of record that Mexico or Sonora could not refuse to give effect to.

27. This "place" was as distinctly located geographically and by common recognition and tradition as it was in these records, and they were all in perfect correspondence.

28. Places are very commonly the subjects of judicial knowledge, according to their recognized names, and when they are named the proof of their existence or location is seldom made otherwise. They are described merely by name and are identified by the common knowledge of the people in or near them—such as "Lafayette square" or "Scott circle," or "Mount Vernon place," in the District of Columbia. A conveyance or a condemnation of such a place would be sustained as being sufficiently definite and accurate by the name to which common consent would assign lines of boundary.

"The place called Ignacio del Babocomori," "in the jurisdiction of the presidio of Santa Cruz," and "adjoining the Rancho San Pedro," in the State of Sonora, is described, first, by the location of a State; second, of a civil jurisdiction; third, of an established rancho which it joined; fourth, by a name that no other place in Mexico has ever had. No one would ever fail to find the location of that place or be at a loss to understand why it is called "a place" and is given a distinctive name. In the arid mountains, it is a narrow plain that is nearly surrounded by high hills, in which there is good grazing for horses and horned cattle. The indispensable part of the place is that from which it takes its name—Babocomori creek—which rises near the foot of the Santa Rita mountains and runs east in a line that is remarkably straight to San Pedro river, which it enters nearly at right angles.

As a place for grazing horses and horned cattle in large herds and on a remote and dangerous frontier, no one in describing it as to its location or uses would have ever thought of saying that it contains eight sitios of land. That would confuse the description instead of making it plainer.

It was denounced as a place as land for the raising of "our stock." The denunciation was admitted "according to the law" for that purpose, and "the law of 20th May, 1825, No. 30," is stated as the legal basis of the entire proceeding. That is a special statute *that relates solely to the disposal of lands for the encouragement of stock-growing*. It has no reference to colonization, which requires residence on the lands. The colonization laws relate to actual, permanent settlements, to be supported chiefly by agriculture, and the entire law is different in every way from the decree

No. 30, of the 20th of May, 1825. This law was a revision of the old law by a decree of August 18, 1824, more than a year before provision was made *for selling lands* to stock-growers.

29. For all the purposes of certainty in the location of "the place called Ignacio del Babocomori," the description so given, admitted, and adopted as the description of the land claimed by the petitioners, in the decree of the treasurer general of Sonora, was sufficient to support *a grant* for a stock farm.

30. But this was not a grant, in the meaning of the Mexican law, for the statute cited in the proceedings made it a sale for money, and it was attended with mutual covenants of the vendor and vendee.

31. To complete the sale, according to law, an upset price must be fixed on the land by valuation, and to prevent the monopoly of land, or more especially of water, a survey was made necessary by the law.

Four sitios was the limit of the sale to a "new breeder" under section 21; but "to those who from the abundance of their stock need more, although old breeders, *the treasurer general shall grant so much more as they need*" (Reynolds, 129, 130). Nicholas Maria Gajiola was treasurer general of Sonora, and acting under these ample powers he directed, adjudged, and concluded and confirmed the survey and sale of the lands.

After admitting the denunciation according to the law, and after examining the writing of denouncement and the

petition based upon it, he decreed that "the Alcalde of Santa Cruz will proceed in the matter under the authority which is conferred upon him, without prejudice to a third party who may have a better right, \* \* \* to the measurement, valuation, and publication for thirty days, consecutively, of the lands referred to in the denouncement, subject to the sovereign decree of the honorable constituent congress of the State, number 30, of the 20th May, 1825, and to the regulations accompanying the same."

This decree did not provide for a *location of a grant*, but for the measurement of the land covered by the "place" or tract to be offered at public biddings for sale, and for its valuation or as much more as a higher bidder might give for it.

It was plainly evident from the language of this decree, which expressly referred to the written denouncement, that it was "*the place*" that the three Eliases (two of them jointly) desired to purchase, and not 8 or 12 sitios to be carved out of the place; and such was, also, the clear purpose of the treasurer general, as it more distinctly appears in his further decree upon the survey and valuation of the tract set apart to Ignacio and Eulalia Elias.

32. The word "sitio" in a survey of agricultural lands means a league or 4,338,464 acres, or, in a sheep ranch, 1,928,133 acres. This is a wide discrepancy, but it accords with the fact that the generic word "sitio" means a *location* and is not an admeasurement, except as it is defined by law in its particular application to special uses to which the land is to be devoted. A comparison of sections 17, 24, 27, 30, and 31 of the act makes this very clear.

The power given the treasurer general by section 20 of this law to *grant* to "old breeders" only "so much more as they need" is not confined to any measurement or limited to any number of sitios, nor is the price fixed. That policy would restrict stock-breeding instead of giving it encouragement. It is manifest that in the wild frontiers Sonora *was not selling lands by the acre to get revenue, but by the location to supply food for the people and to repress the savage tribes of Indians roving over that country.* It was a wise public policy that gave to the Treasurer General under cautious examinations the full discretion to make additional *grants* of land to *old breeders* when they had bought and paid for large tracts of adjacent pasture lands. The apparently loose and careless way in which the lines of this survey were made at the eastern and western boundaries of this place is accounted for by the fact that *the petition did not call for any number of sitios, but for a named place suited to stock-growing, and that Elias was an "old breeder" and would get all the land available for water and grass in the little valley of which Babocomori creek was the real feature of any importance.* Their search was for the natural boundaries of the valley along its water-shed, and natural objects were properly selected to stand for monuments to designate the corners and to demark the boundaries. *The center line had water springs, tanks, and reservoirs for its monuments and the exterior lines had hills, rocks, and trees for their monuments.*

33. When the survey was reported the question of the excess of land over eight sitios *came squarely up for adjudication, and it was then determined by the lawful and plenary*

authority of the Treasurer General of Sonora, on the approval of the proceedings by the Attorney General, Felipe Gil.

The Attorney General then saw "from the surveys" as reported in writing, in the same way that *Flipper afterwards* saw it, that there was a large excess over eight sitios in the tract set apart for Ignacio and Eulalia Elias, whose corners had been established "in the place of San Ignacio del Babocomori," and he thus states the fact: "I find nothing in the proceedings to prevent *adjudication* of the land to the petitioners, unless it be that the quantity exceeds that mentioned in article 21 of the decree of 20th of May, 1825." Here was a statement of the proper law officer that the quantity in the tract *exceeded the ordinary limits of the law*—eight sitios; "but if your honor is satisfied as to the requirements recited in the 22d (article) I am of the opinion that the land be sold to the denouncers, if there should be no one willing to pay a higher price (then) for the same." This opinion was given on December 20, 1828.

"And the Treasurer General having been (being) *satisfied with the foregoing request* of the Attorney General," the land was sold to the denouncers, Ignacio and Eulalia Elias.

Now, if it is assumed that no more than eight sitios were sold and paid for on the 21th of December, 1828, it does not follow that the survey of the tract or place was not confirmed, and that the conveyance by Mendoza "by way of sale" did not also lawfully include a grant within the limits of the survey "*of so much more as they need*" for the use of their cattle and horses, which was demarked by natural objects.

*Ut res magis valebat quam pereat*, the words "give and *adjudicate* by way of sale," may well apply to the final offering

of the land by the "order" of the Junta des Almonedas, for which *Elias* made no bid, but stood on the offer to pay the valuations, and the word "grant" may apply to the place "named San Ignacio del Babocomori," as it was designated by the survey.

34. When the money was paid for the land the record states that it was paid for at the price "*at which the said tract of land in the place of Babocomori was valued and sold.*"

35. Up to this point in the proceedings neither *Elias* nor any officer concerned in the sale of this land had said anything about eight sitios of land, except that the alcalde surveyor in valuing the land said that six sitios contained running water and two were dry; and the Attorney General said in his report to the Treasurer General that the *expediente* contained *eight sitios of land* for breeding horned cattle and horses, and that *the quantity exceeds* that mentioned in article 21 of the decree of 20th of May, 1825; and he recommended, "requested," the sale of the land to the denouncers, although it was in excess of eight sitios in area, according to the survey, which only fixed the center line by measurement and estimation and the end lines by natural and other monuments at the corners of the tract "in the place of San Ignacio del Babocomori" without actual measurement.

This "request" was granted and confirmed by the Treasurer General, and the Junta des Almonedas acting with him ascertained that no purchaser had come forward to bid more than the valuation. The sale was ordered by this convocation—the Junta—the cry of the auctioneer being, "Let it be



sold! Let it be sold! Let it be sold! Sold to Don Ignacio and Donna Eulalia Elias." "In which terms said act was concluded," etc. The eight sitios made the minimum cost of the land, by that measurement, to any purchaser who would bid more for it, but the grant in excess of that measurement to "the old breeders" would not necessarily have passed by the sale to inexperienced breeders. Evidently this was not a sale by *varas* or *sitios* or any exact measurement, for such a sale, if limited to eight sitios, would exclude the *denouncers* from the benefit petitioned for and granted them by the Treasurer General as "old breeders" of horned cattle and horses of all that "place" as land *needed by them for that purpose*. By selling them eight sitios at the government price, Sonora received all that was demanded by her agents for the entire place called "San Ignacio del Babocomori," that being their own valuation and manifestly a full price, the Eliases not having bid that or any other sum, but having agreed in their petition for the place as follows: "Obligating ourselves to pay to the nation the *corresponding tax* (valuation), with all other matters that justice may require until the title and confirmation thereof shall be obtained." The law required them to pay the costs and expenses of the survey, which were quite considerable, and were not to be returned to them in any event.

36. The "tax" was assessed by the valuation of the land, which was *estimated* at eight sitios, of which six had running water. On every occasion when eight sitios are mentioned in the proceedings it was with reference to the *estimated* value of the *estimated* quantity, and not with reference to the exact measurement of the area of land that

was sold. To prevent monopoly of water, one person could not purchase less than four sitios of land for stock-raising.

37. The quantity of land was the least important factor in the purchase. So little, indeed, was the quantity considered that no other rancho has been established or petitioned for to this time in "the place called San Ignacio del Babocomori." The main purpose of this official survey was to fix the corners of this "place" with reference to natural monuments so as to establish by law a place for a rancho that was known geographically by a certain name, which "place" included a good water supply. It is still "the place San Ignacio del Babocomori," and is so described in all the papers *and by every witness in the case*. The corner monuments and the center monuments are still there, some of them permanent natural objects, and others are artificial.

38. These legal proceedings were closed on the 24th of December, 1828.

Four years later, on 25th of December, 1832, the "titulo" in evidence in this case was made out by the then Treasurer General José Maria Mendoza, *from the record made by his predecessor, Cajiola*, to which Mendoza added a "*formal title* in favor of the citizen Ignacio Elias and Donna Eulalia Elias *for their security*."

In April, 1833, Bustamente, the Governor of Sonora, by a decree, No. 762, ordered the then Treasurer General to issue *grant titles* to Ignacio Elias and Eulalia Elias for "San Ignacio del Babocomori, situated in the jurisdiction of the presidio of Santa Cruz," in conformity with the provisions of decree No. 27 of the 11th August, 1831.

If this additional muniment of title was ever issued, it is not in the record, but the order for its issue is sufficient to supplement the previous "formal title" *delivered to them for their security* "and to constitute a confirmatory grant in favor of the Eliases, to whom were sold on the 24th December, 1828, San Ignacio del Babocomori."

This decree and record fully sustains the claim set up in this case by showing conclusively that "San Ignacio del Babocomori" *had passed into private ownership* in good faith and by such legal acts and formalities as bound Sonora to make the title good in law if it was not complete in form. This decree was one of divestiture of title and its investiture in purchasers who were innocent, if any further act or declaration was necessary.

39. No act of these purchasers and no omission or neglect of theirs can be cited from the evidence to show laches or covin on their part. They are in court with clean hands petitioning for just rights.

40. Immediately upon the completion of this purchase the Eliases proceeded to establish their rancho at the place called "Ignacio del Babocomori." They built houses there and had a *major domo*, with his family, to reside on the land, with other herdsmen in charge of large herds of horses and cattle, and that possession was maintained by them with strong hand against hostile Indians and by their successors against the scarcely less savage intruders; and this compliance with their covenants has cost the expenditure of much labor and money and human life. Not for a day has this rancho ever been abandoned by its owners. When

Congress gave to the trespassing squatters on this rancho the sanction of a legalized right of occupancy the contention for title and possession necessarily became a question proper for the courts. Not content with this form of security and shelter against honest owners, these persons have constantly resorted to violence to protect their unlawful trespass and have killed those who went on the lands to examine or survey them.

This fact is established in all the depositions that relate to the subject. Even Flipper, whose clientage is among the squatters and makes himself conspicuously active in his efforts to destroy the rights of honest purchasers in his pretended zeal for the United States, was afraid to attempt an actual survey of the land in question. He preferred to rest his opinions upon a blackboard demonstration of the scraps of engineering information he had picked up in a partial military education at West Point and his knowledge of the Spanish language obtained in his association with the mixed races of white men, Mexicans, negroes, and Indians that inhabit this wild frontier; but even Mr. Flipper found the landmarks and piles of stones collected for monuments of the old Mexican survey made seventy years before he was ever on that soil.

He found it impossible to read intelligently the field-notes of the unskilled alcalde, but he could still trace the center line of the survey as the alcalde had established it and as every one else has recognized it from that day to this, and he found nearly every pile of stones and all but one of the natural monuments described in the field-notes of the alcalde.

Flipper's testimony, without being so intended, gives very strong support to the survey of the alcalde.

Mexico did not intend to convey to the United States as against the citizens of Sonora, with whom she was about to part with mutual and deep regret, any right to lands held by them in good faith; and this is the spirit of the treaty for the Gadsden purchase. This is the true intent of that treaty.

At the date of that treaty the Republic of Mexico had no right in law or equity to the "Place San Ignacio del Babocomori," and that government had no intention and no right to drive the owners from their lands and to resume the title or the possession thereof.

If Mexico had no such purpose or right as against her people in Sonora, the treaties with the United States prohibited us from setting up a claim as a sovereign power that Mexico had no right to assert.

Under the treaties and under the act of 1891 the United States have consented to be sued in our courts as to any of these alleged rights of the Mexicans, and have empowered those courts with full equity jurisdiction in reference to all such matters. Under that authority the Supreme Court and the Land Court can make any decree that justice may require to protect the interests of all concerned.

The courts have express authority to cause surveys to be made and to execute a sale or grant of land by Mexico, in whole or in part, according to the very right of the matter. If the survey of this land by the alcalde is not exact—if he has made a mistake as to the quantity of land included in the metes and bounds designated by him or in any form of proceeding—still enough is left of record that is undisputed to enable a court of equity to do justice to innocent pur-

chasers who have done all they could to comply with the laws in their payment for the land, in protecting it and the neighboring country from the depredations of hostile Indians in order to promote a necessary public policy, and in maintaining a force there that has protected the lives and food of the people.

Continued possession without any thought of abandonment for sixty years, and the payment of large sums for taxes and for permanent improvements, without objection from Sonora or Mexico or the United States, or any intimation of an adverse claim from any source, establishes a prescriptive right to this land that is coextensive with the area so occupied and claimed that a subsequent purchaser must respect, whether the purchaser is a government or only a private person. The United States cannot rely on the maxim "*nullus tempus occurrit regi*," because the treaty concedes to Mexican claimants the right to set up title by prescription against the Government.

JOHN T. MORGAN,  
*Attorney for Appellant.*

*Sup. Ct. Rep. 22, 1897*

---

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 30

ROBERT PERRIN, APPELLANT.

THE UNITED STATES, THE CITIZEN LAND AND  
CATTLE COMPANY ET AL.

ADDITIONAL ARGUMENT OF JOHN T. MORGAN,  
ATTORNEY FOR APPELLANT.

---

JOHN T. MORGAN, PARTNER, WASHINGTON, D. C.

IN THE  
**Supreme Court of the United States.**

**OCTOBER TERM, 1897.**

---

*No.* \_\_\_\_\_

---

ROBERT PERRIN, APPELLANT,

*vs.*

THE UNITED STATES, THE CRITIDEN LAND AND  
CATTLE COMPANY, ET AL.

---

**ADDITIONAL ARGUMENT OF JOHN T. MORGAN,  
ATTORNEY FOR APPELLANT.**

---

1. As to the right of the appellant to hold this land against the United States, and as to the certainty and definiteness of the location of the tract, the real question is whether "*the place named San Ignacio del Babocomori, situate in the jurisdiction of the presidio of Santa Cruz,*" "*adjoining the rancho of San Pedro,*" was segregated from the public domain in Mexico, and whether this was done by proceedings for the benefit of Mexican citizens instituted and completed "*according to the laws and ordinances of the government*" of Sonora before the 25th day of September, 1853.



2. If the land was, in fact, segregated from the Mexican public domain and had in equity and justice passed into private ownership, but the title was not "complete and perfect at the date of the acquisition of the territory by the United States," this state of facts gives the United States courts jurisdiction; and if the right acquired was such as "the claimant would have a lawful right to make perfect and complete had the territory not been acquired by the United States," then if "the United States are bound, upon principles of public law or by the provisions of the treaty of cession, to respect and permit to become complete and perfect if the same was not at said date complete and perfect," the title has not passed to the United States *under the treaty* except for the purpose of confirmation to the holder of the equitable title.

The powers conferred upon the courts by the statute of March 3, 1891, are very broad, but they would be useless for the purposes of justice and to execute the agreement between the two Republics as expressed in their treaties, *if they had been confined to the adjudication of the question whether a perfect legal title had actually passed from Mexico for lands granted or sold to her citizens whom she was about to expatriate under painful circumstances.*

3. The right to demand a "release" of the claim of the United States was made, by the treaties and the statute, to depend upon the right to have the claim of a Mexican made perfect and complete under Mexican "laws and ordinances" (if it was not already complete) had the territory not been acquired by the United States.

4. The state of progress that had been made towards obtaining a "title lawfully regular and complete" from Mexico, which would give our courts jurisdiction to *complete the title*, is not defined in these treaties or in our act of Congress; but the nature and scope of the powers conferred on the courts in section 7 of the act of March 3, 1891, clearly indicate the intention of Congress to confer upon them plenary equity jurisdiction in respect of all imperfect titles lawfully and justly derived from Mexico or Sonora in favor of *bona fide claimants*. Section 7 of that law is as follows:

"SEC. 7. That all proceedings subsequent to the filing of said petition shall be conducted as near as may be according to the practice of the courts of equity of the United States, except that the answer of the attorney of the United States shall not be required to be verified by his oath, and except that, as far as practicable, testimony shall be taken in court or before one of the justices thereof. The said court shall have full power and authority to hear and determine all questions arising in cases before it relative to the title to the land the subject of such case, the extent, location, and boundaries thereof, and other matters connected therewith fit and proper to be heard and determined, and by a final decree to settle and determine the question of the validity of the title and the boundaries of the grant or claim presented for adjudication, according to the law of nations, the stipulations of the treaty concluded between the United States and the Republic of Mexico at the city Guadalupe Hidalgo, on the second day of February, in the year of our Lord eighteen hundred and forty-eight, or the treaty concluded between the same powers at the City of Mexico, on the thirtieth day of December, in the year of our Lord eighteen hundred and fifty-three, and the laws and ordinances of the government from which it is alleged to have been derived, and all other questions properly arising between the claimants or other parties in the case and the United States, which decree shall in all cases refer to the treaty, law, or ordinance under which such claim is confirmed or rejected; and in confirming any such claim, in

whole or in part, the court shall in its decree specify plainly the location, boundaries, and area of the land the claim to which is so confirmed."

That section of the act would be superfluous if it did not apply to what we term perfect equities or equitable titles to lands, and if in connection with paragraph 1 of section 13 it did not include the power "to make perfect" grants of land that were not "complete and perfect at the date of the acquisition of the territory by the United States."

5. These powers thus conferred upon the court expressly include the jurisdiction and "full power and authority to hear and determine all questions arising in cases before it relative to the title to the land the subject of such case, the extent, location, and boundaries thereof, and other matters connected therewith fit and proper to be heard and determined, and by a final decree to settle and determine the question of the validity of the title *and the boundaries* of the grant *or claim* presented for adjudication, according to the laws of nations, and the stipulations of the treaties between the two countries.

Under these provisions of law the courts, whose "proceedings \* \* \* shall be conducted as near as may be according to the practice of the courts of equity of the United States," could not hesitate *to reform a deed or a record or a survey*, if need be, to make it conform to the truth, if that was necessary for the purposes of justice; nor would they hesitate to direct a survey, to amend or correct one, which was defective through the unskillfulness of a government surveyor, to the injury of a *bona fide* purchaser of lands at a sale made by the government. And in all such matters we

are bound to consider the state of the law and practice in Mexico in the disposal of lands and in the location and survey of lands in vast tracts of country inhabited by wild and savage bands of Indians.

6. Our treaties with Mexico provide for the security and the allowance by our tribunals of all vested rights of property held by claimants under Mexican laws, ordinances, and usages, whether complete or incomplete as to the muniments of title, including surveys, proceedings of land tribunals, and conveyances, and this without respect to what we call a perfect legal title or a perfect equitable title.

Nothing less than this full protection of the people, whose allegiance was being changed by compulsion, would satisfy the laws of nations, the stipulations of the treaties, the laws and ordinances of the government from which they were alienated, and the conscience of the American people.

This full measure of protection is to be guaranteed by the decree of our highest court, through a specific grant of jurisdiction, under these several heads, and it is further empowered to pass upon "*all other questions properly arising between the claimants or other parties in the case and the United States.*" To prevent a possible failure of justice, as it is discerned in the more perfect light of equity jurisprudence, the Supreme Court of the United States is given full power to allow amendments of the proceedings in the Court and extraordinary powers to obtain further evidence bearing upon any question as to which doubts may arise.

Congress has taken a broad and liberal view of the whole subject and has so provided that the Government shall acquire nothing under these treaties that in good faith belonged

to Mexican citizens when they became, by the act of the two governments, the unwilling inhabitants of a Government that most of them were embittered against.

7. No claim of the United States in conflict with an honest claim of a Mexican citizen based on a purchase and payment for property from Mexico or any State of that Republic and capable of a reasonable enforcement should be enforced by the Supreme Court of the United States when its "*release*" is the full measure of the decree that is proper to be rendered in the case.

8. This Court is not required to adjudicate that the title of the claimant is perfect as to all the world, but that it should be *released* from the power of the Government of the United States to dispose of the land. Although the claimant's title may be imperfect in form, yet if it is just, equitable, and capable of being made perfect in substance it does not pass to the United States by the treaty.

9. If the title to "the place named Babocomori" is lost to the vendee, it is clearly the fault of the Mexican authorities through whom that government has received a full price for the property, and, Mexico having sold it afterwards to the United States, neither government is liable to refund the purchase-money and interest to the honest purchaser. The loss falls on him alone. We cannot afford to take this land at that cost to the original purchasers, to which has been added at least \$30,000 in taxes and in subsequent sales to our own people who are innocent purchasers. This land has cost our citizens who claim it more than the price per

acre that the United States paid for the 45,535 square miles bought from Mexico under the Gadsden purchase.

10. This territory was purchased from Mexico for the sake of dominion. It was not a land speculation. It was not acquired by conquest, and the reservations made in favor of Mexicans are entitled to the same protection by estoppel and by the laws of equity and justice as if the parties to the sale and purchase were private persons.

11. In acquiring a title to this territory the United States did not acquire the sort of sovereign power of Mexico through which that government could arbitrarily refuse to complete a title that was just but incomplete. On the contrary, Congress requires it to be completed if it was lawfully derived from Mexico under an express treaty obligation and as an act of justice to be determined by decrees of our courts and to be by them executed.

12. Mexico, the vendor of the United States, did not sell any land that had been previously sold to a Mexican citizen for valuable consideration and by lawful authority. When the ownership of the land became a vested right, whether or not the muniments of title were complete or perfect, *that right was not intended to be destroyed by the treaty*, and all the laws of estoppel are made operative by the treaty in favor of the innocent purchaser to the same effect as if the two governments were private persons dealing with reference to the land.

13. Article VIII of the treaty of 1848 is made a part of the treaty of 1853 in the sixth article. It applies alike to

Mexicans who were then "established in territories previously belonging to Mexico" and "to Mexicans not established there" as actual inhabitants. As to both classes, that article provides the same protection for all rights of property. As to non-resident Mexicans, it provides that "in said territories property of every kind now belonging to Mexicans not established there *shall be inviolably respected*," and as to all Mexicans the right of "retaining the property which they *possess* in the said territories" is placed under the inviolable guaranty above quoted.

14. Article IX of the treaty of 1848 was intended to express the same meaning that was expressed in article X, (which was stricken out), in the same terms that were used, substantially, in the French treaty relating to Louisiana, concluded April 30, 1803 (art. III).

In that article also, which is made a part of the Gadsden treaty, this express guaranty is inserted, that Mexicans "shall be maintained and protected in the free enjoyment of their liberty and property," &c. In the second protocol of that treaty it is affirmed that—

"The American Government by suppressing the Xth article of the treaty of Guadalupe did not in any way intend to annul the grants of lands made by Mexico in the ceded territories. These grants, notwithstanding the suppression of the article of the treaty, preserve *the legal value which they may possess*, and the grantees may cause their *legitimate (titles) (?)* to be acknowledged before the American tribunals."

Article V of the treaty of 1853 expressly applies, to the Gadsden purchase, the articles numbered 8, 9, 16, and 17 of the treaty of Guadalupe-Hidalgo, and secures to Mexicans

*"all rights of persons and property, both civil and ecclesiastical, \* \* \* as fully and as effectually as if the said articles were herein again recited and set forth."*

15. Under Mexican and Spanish laws the public domain *in the territories* was disposed of by grants, either for purposes of settlement or colonization or as a mark of public favor, while *in the States* the public lands were treated as "rentes"—sources of revenue—and were sold for money.

16. The territory acquired under the treaty of 1848 did not include any part of a State of the Mexican Republic, but the Gadsden purchase cut deep into the territorial limits of the State of Sonora.

This state of facts was provided for in the first subdivision of section 13 of the act of March 3, 1891. That provision gives the courts jurisdiction to adjudicate claims to lands the titles to which are "derived from the government of Spain or Mexico or from any of the States of the Republic of Mexico having lawful authority to make grants of land," which means the power to dispose of lands.

This law of Congress executes the purpose of articles VIII and IX and of the second protocol of the treaty of 1848, and is obligatory on the courts as a legislative construction of those engagements of the Government and of the "rights of persons and property" included in "*legitimate titles derived from the States of the Republic of Mexico* having lawful authority to make grants of land."

Without this express statutory authority the courts would have to work out their power to confirm or annul titles derived from those States by an embarrassing resort to construction, if it really existed.



17. This statute covers sales of lands made by the States of Mexico. Conceding to the broader generic word "grants" its fullest effect, as it is used in the treaties, it would mean grants made by the "United Mexican States," as in the treaty of 1848, or by the "Republic of Mexico," as in the treaty of 1853. If this was the only source of the titles under which Mexicans could claim lands, such a construction would, as is claimed by the Government in this case, sweep away every land title in Sonora that had not been granted by the Republic, or by Spain.

This was the purpose of Santa Aña's terrible ukase, but our Congress annulled it or repudiated it in the act of March 3, 1891.

18. Sonora could, as proprietor, make grants of land or sales of land for a consideration in money, and it is a sale of land and not a grant of land that the court is now considering.

This state of the case is important to be considered with reference to article VI of the treaty of 1853.

That article is peculiar, in that it fixes a date prior to the conclusion of the treaty—the 25th of September—when the minister of the United States "proposed to the government of Mexico to terminate the question of boundary," as the date that should terminate the power of the Republic of Mexico to make grants of land.

The good faith of the Mexican government was seriously questioned by our insistence on this provision in the treaty.

This abundant caution may have been inspired by a feeling of distrust in the good faith of Santa Aña, who was then President, or, more likely, by the fact that the United

States had experienced great embarrassment in Florida in respect of grants made during the interval between the conclusion of the treaty of 1819 and its ratification by the King of Spain, and in Louisiana from like questions. (*U. S. vs. Arredondo*, 6 Peters, 706; *Foster vs. Neilson*, 2 Peters, 306.)

The grants of land mentioned in article VI of the treaty of 1853 were only such as *the Republic* had the exclusive power to make, and the provision that grants made before the 25th of September, 1853, should "not be respected or considered as *obligatory* which have not been located and recorded in the archives of Mexico" must relate to grants *made by the Republic and recorded in its archives.*

19. If Sonora had the right to grant or sell lands to Mexicans it must have had the right to locate the lands and to keep the record of the transaction in its archives. These are not the archives of the Republic of Mexico. Congress declares, in accordance with the treaties, that such grants were valid if lawfully derived from the States, and does not add that they are void unless they are recorded in the archives of Mexico. In cases free from fraud that rest on a title lawfully derived from Sonora, Congress in the act of 1891 empowers the court to confirm the grant without its having been recorded in the archives of Mexico.

20. The jurisdiction of the court attaches in this case, because Congress, in giving legislative construction and effect to these treaties, has provided that "legitimate titles" to land derived from the States of Mexico may be subjects of adjudication.

If location and registration are also requisites of a title

derived from Sonora this requirement is fulfilled by the fact that the original "matrix" of the "titulo" is found in the archives at Hermosillo.

As to this fact there is no dispute. The location of this land is established by a series of facts, partly of record and partly established by reference to natural objects, all agreeing in the specific designation of its actual geographical location on the face of the earth.

21. The "denunciation" of this tract of land was made in 1827, seventy years ago, as "the lands named San Ignacio del Babocomori, *situated* in the jurisdiction of the presidio of Santa Cruz," and the denouncement, being in writing, "was admitted, according to the law, on the 1st of July, 1827, and the writing of denouncement and the other proceedings in relation thereto are as follows."

22. The written denouncement and all the other proceedings were filed and made a record in the archives of Sonora as the "matrix" of the "titulo."

Then follows, in the proceedings, the petition of Ignacio Elias and his sister, Eulalia Elias, in the words following :

"To the Treasurer General :

"We, Ignacio Elias and Eulalia Elias, present ourselves before your honor, respectfully representing that, needing a tract of land for our stock, we denounce, *in company with Don Rafael Elias, Captain Ignacio Elias, and Don Nepomuceno Feliz, the vacant tract of land adjoining the rancho of San Pedro, situated in the jurisdiction of the presidio of Santa Cruz, as far as the place of Tres Alamos, obligating ourselves to pay to the nation the corresponding tax, with all other matters that justice may require, until the title and confirmation thereof shall be obtained ; wherefore, your honor will be pleased to consider the vacant tract referred to, petitioned*

for; wherefore, we pray your honor to be pleased to order as we have prayed for, in which we will receive favor.

"ARIZPE, *March 12th*, 1827.

"In the absence of and at the request of—

"DON IGNACIO ELIAS.

"JOAQUIN ELIAS.

"EULALIA ELIAS."

23. In this petition no claim was made for any specific number of sitios of land nor lands of any particular shape or dimensions. What was claimed was "*a tract of land for our stock*," and it was described generally as "the vacant tract of land adjoining the rancho of San Pedro, situated in the jurisdiction of the presidio of Santa Cruz as far as the place Tres Almos." It was made on behalf of three persons, so that *the general tract* had to be apportioned. The law limited to each person four sitios, *unless they should show that they needed more land for pasturage*.

24. On the same day, July 1, 1827, the petition and denouncement were referred to Nicolas Maria Cajiola, the treasurer general of Sonora, who "thus decreed and signed" "that the alcalde of Santa Cruz will proceed in the matter under the authority which is conferred on him, without prejudice to a third party who may have a better right, first citing the colindantes (neighboring proprietors) to *the measurement*, valuation, and publication for thirty days consecutively of *the lands* referred to in the denouncement."

25. The alcalde was Alejandro Franco, constitutional alcalde of the presidio of Santa Cruz, who had for his assistant Ramon Romero, acting by special authority in the absence of a notary public, according to law. The name of

the alcalde was signed by Ramon Romero to the papers, evidently because the alcalde could not write his name, and it was attested with his mark.

26. He went to San Pedro on the 5th of October, 1828, "for the purpose of *measuring* the lands petitioned for by the petitioners."

*The land had been located in the petition by a public geographical name and by the denouncement in writing, "which was admitted according to law" by the treasurer general of Sonora as "the lands named San Ignacio del Babocomori, in the jurisdiction of the presidio of Santa Cruz."* In the caption to the "titulo" it is called "the place named San Ignacio del Babocomori," an admission of record that Mexico or Sonora could not refuse to give effect to.

27. This "place" was as distinctly located geographically and by common recognition and tradition as it was in these records, and they were all in perfect correspondence.

28. Places are very commonly the subjects of judicial knowledge, according to their recognized names, and when they are named the proof of their existence or location is seldom made otherwise. They are described merely by name and are identified by the common knowledge of the people in or near them—such as "Lafayette square" or "Scott circle," or "Mount Vernon place," in the District of Columbia. A conveyance or a condemnation of such a place would be sustained as being sufficiently definite and accurate by the name to which common consent would assign lines of boundary.

"The place called Ignacio del Babocomori," "in the jurisdiction of the presidio of Santa Cruz," and "adjoining the Rancho San Pedro," in the State of Sonora, is described, first, by the location of a State; second, of a civil jurisdiction; third, of an established rancho which it joined; fourth, by a name that no other place in Mexico has ever had. No one would ever fail to find the location of that place or be at a loss to understand why it is called "a place" and is given a distinctive name. In the arid mountains, it is a narrow plain that is nearly surrounded by high hills, in which there is good grazing for horses and horned cattle. The indispensable part of the place is that from which it takes its name—Babocomori creek—which rises near the foot of the Santa Rita mountains and runs east in a line that is remarkably straight to San Pedro river, which it enters nearly at right angles.

As a place for grazing horses and horned cattle in large herds and on a remote and dangerous frontier, no one in describing it as to its location or uses would have ever thought of saying that it contains eight sitios of land. That would confuse the description instead of making it plainer.

It was denounced as a place as land for the raising of "our stock." The denunciation was admitted "according to the law" for that purpose, and "the law of 20th May, 1825, No. 30," is stated as the legal basis of the entire proceeding. That is a special statute *that relates solely to the disposal of lands for the encouragement of stock-growing*. It has no reference to colonization, which requires residence on the lands. The colonization laws relate to actual, permanent settlements, to be supported chiefly by agriculture, and the entire law is different in every way from the decree

No. 30, of the 20th of May, 1825. This law was a revision of the old law by a decree of August 18, 1824, more than a year before provision was made *for selling lands* to stock-growers.

29. For all the purposes of certainty in the location of "the place called Ignacio del Babocomori," the description so given, admitted, and adopted as the description of the land claimed by the petitioners, in the decree of the treasurer general of Sonora, was sufficient to support a *grant* for a stock farm.

30. But this was not a grant, in the meaning of the Mexican law, for the statute cited in the proceedings made it a sale for money, and it was attended with mutual covenants of the vendor and vendee.

31. To complete the sale, according to law, an upset price must be fixed on the land by valuation, and to prevent the monopoly of land, or more especially of water, a survey was made necessary by the law.

Four sitios was the limit of the sale to a "new breeder" under section 21; but "to those who from the abundance of their stock need more, although old breeders, *the treasurer general shall grant so much more as they need*" (Reynolds, 129, 130). Nicholas Maria Gajiola was treasurer general of Sonora, and acting under these ample powers he directed, adjudged, and concluded and confirmed the survey and sale of the lands.

After admitting the denunciation according to the law, and after examining the writing of denouncement and the

petition based upon it, he decreed that "the Alcalde of Santa Cruz will proceed in the matter under the authority which is conferred upon him, without prejudice to a third party who may have a better right, \* \* \* *to the measurement, valuation, and publication for thirty days, consecutively, of the lands referred to in the denouncement, subject to the sovereign decree of the honorable constituent congress of the State, number 30, of the 20th May, 1825, and to the regulations accompanying the same.*"

This decree did not provide for a *location of a grant*, but for the measurement of the land covered by the "place" or tract to be offered at public biddings for sale, and for its valuation or as much more as a higher bidder might give for it.

It was plainly evident from the language of this decree, which expressly referred to the written denouncement, that it was "*the place*" that the three Eliases (two of them jointly) desired to purchase, and not 8 or 12 sitios to be carved out of the place; and such was, also, the clear purpose of the treasurer general, as it more distinctly appears in his further decree upon the survey and valuation of the tract set apart to Ignacio and Eulalia Elias.

32. The word "sitio" in a survey of agricultural lands means a league or 4,338,464 acres, or, in a sheep ranch, 1,928,133 acres. This is a wide discrepancy, but it accords with the fact that the generic word "sitio" means a *location* and is not an admeasurement, except as it is defined by law in its particular application to special uses to which the land is to be devoted. A comparison of sections 17, 24, 27, 30, and 31 of the act makes this very clear.



The power given the treasurer general by section 20 of this law to *grant* to "old breeders" only "so much more as they need" is not confined to any measurement or limited to any number of sitios, nor is the price fixed. That policy would restrict stock-breeding instead of giving it encouragement. It is manifest that in the wild frontiers Sonora *was not selling lands by the acre to get revenue, but by the location to supply food for the people and to repress the savage tribes of Indians roving over that country.* It was a wise public policy that gave to the Treasurer General under cautious examinations the full discretion to make additional *grants* of land to old breeders when they had bought and paid for large tracts of adjacent pasture lands. The apparently loose and careless way in which the lines of this survey were made at the eastern and western boundaries of this place is accounted for by the fact that *the petition did not call for any number of sitios, but for a named place suited to stock-growing, and that Elias was an "old breeder" and would get all the land available for water and grass in the little valley of which Babocomori creek was the real feature of any importance.* Their search was for the natural boundaries of the valley along its water-shed, and natural objects were properly selected to stand for monuments to designate the corners and to demark the boundaries. *The center line had water springs, tanks, and reservoirs for its monuments and the exterior lines had hills, rocks, and trees for their monuments.*

33. When the survey was reported the question of the excess of land over eight sitios *came squarely up for adjudication, and it was then determined by the lawful and plenary*

*authority of the Treasurer General of Sonora, on the approval of the proceedings by the Attorney General, Felipe Gil.*

The Attorney General then saw "from the surveys" as reported in writing, in the same way that *Flipper afterwards* saw it, that there was a large excess over eight sitios in the tract set apart for Ignacio and Eulalia Elias, whose corners had been established "in the place of San Ignacio del Babocomori," and he thus states the fact: "I find nothing in the proceedings to prevent *adjudication* of the land to the petitioners, unless it be that the quantity exceeds that mentioned in article 21 of the decree of 20th of May, 1825." Here was a statement of the proper law officer that the quantity in the tract *exceeded the ordinary limits of the law*—eight sitios; "but if your honor is satisfied as to the requirements recited in the 22d (article) I am of the opinion, that *the land be sold to the denouncers*, if there should be no one willing to pay a higher price (then) for the same." This opinion was given on December 20, 1828.

"And the Treasurer General having been (being) *satisfied with the foregoing request* of the Attorney General," the land was sold to the denouncers, Ignacio and Eulalia Elias.

Now, if it is assumed that no more than eight sitios were sold and paid for on the 24th of December, 1828, it does not follow that the survey of the tract or place was not confirmed, and that the conveyance by Mendoza "by way of sale" did not also lawfully include a grant within the limits of the survey "*of so much more as they need*" for the *use of their cattle and horses*, which was demarked by natural objects.

*Ut res magis valebat quam pereat*, the words "give and *adjudicate* by way of sale," may well apply to the final offering

of the land by the "order" of the Junta des Almonedas, for which *Elias* made no bid, but stood on the offer to pay the valuations, and the word "grant" may apply to the place "named San Ignacio del Babocomori," as it was designated by the survey.

34. When the money was paid for the land the record states that it was paid for at the price "*at which the said tract of land in the place of Babocomori was valued and sold.*"

35. Up to this point in the proceedings neither *Elias* nor any officer concerned in the sale of this land had said anything about eight sitios of land, except that the alcalde surveyor in valuing the land said that six sitios contained running water and two were dry; and the Attorney General said in his report to the Treasurer General that the *expediente* contained *eight sitios of land* for breeding horned cattle and horses, and that *the quantity exceeds* that mentioned in article 21 of the decree of 20th of May, 1825; and he recommended, "requested," the sale of the land to the denouncers, although it was in excess of eight sitios in area, according to the survey, which only fixed the center line by measurement and estimation and the end lines by natural and other monuments at the corners of the tract "in the place of San Ignacio del Babocomori" without actual measurement.

This "request" was granted and confirmed by the Treasurer General, and the Junta des Almonedas acting with him ascertained that no purchaser had come forward to bid more than the valuation. The sale was ordered by this convocation—the Junta—the cry of the auctioneer being, "Let it be

sold! Let it be sold! Let it be sold! Sold to Don Ignacio and Donna Eulalia Elias." "In which terms said act was concluded," etc. The eight sitios made the minimum cost of the land, by that measurement, to any purchaser who would bid more for it, but the grant in excess of that measurement to "the old breeders" would not necessarily have passed by the sale to inexperienced breeders. Evidently this was not a sale by *varas* or *sitios* or any exact measurement, for such a sale, if limited to eight sitios, would exclude the *denouncers* from the benefit petitioned for and granted them by the Treasurer General as "old breeders" of horned cattle and horses of all that "place" as land *needed by them for that purpose*. By selling them eight sitios at the government price, Sonora received all that was demanded by her agents for the entire place called "San Ignacio del Babocomori," that being their own valuation and manifestly a full price, the Eliases not having bid that or any other sum, but having agreed in their petition for the place as follows: "Obligating ourselves to pay to the nation the *corresponding tax* (valuation), with all other matters that justice may require until the title and confirmation thereof shall be obtained." The law required them to pay the costs and expenses of the survey, which were quite considerable, and were not to be returned to them in any event.

36. The "tax" was assessed by the valuation of the land, which was *estimated* at eight sitios, of which six had running water. On every occasion when eight sitios are mentioned in the proceedings it was with reference to the *estimated* value of the *estimated* quantity, and not with reference to the exact measurement of the area of land that

was sold. To prevent monopoly of water, one person could not purchase less than four sitios of land for stock-raising.

37. The quantity of land was the least important factor in the purchase. So little, indeed, was the quantity considered that no other rancho has been established or petitioned for to this time in "the place called San Ignacio del Babocomori." The main purpose of this official survey was to fix the corners of this "place" with reference to natural monuments so as to establish by law a place for a rancho that was known geographically by a certain name, which "place" included a good water supply. It is still "the place San Ignacio del Babocomori," and is so described in all the papers *and by every witness in the case*. The corner monuments and the center monuments are still there, some of them permanent natural objects, and others are artificial.

38. These legal proceedings were closed on the 24th of December, 1828.

Four years later, on 25th of December, 1832, the "titulo" in evidence in this case was made out by the then Treasurer General José Maria Mendoza, *from the record made by his predecessor, Cajiola*, to which Mendoza added a "*formal title in favor of the citizen Ignacio Elias and Donna Eulalia Elias for their security.*"

In April, 1833, Bustamente, the Governor of Sonora, by a decree, No. 762, ordered the then Treasurer General to issue *grant titles* to Ignacio Elias and Eulalia Elias for "San Ignacio del Babocomori, situated in the jurisdiction of the presidio of Santa Cruz," in conformity with the provisions of decree No. 27 of the 11th August, 1831.

If this additional muniment of title was ever issued, it is not in the record, but the order for its issue is sufficient to supplement the previous "formal title" *delivered to them for their security* "and to constitute a confirmatory grant in favor of the Eliases, to whom were sold on the 24th December, 1828, San Ignacio del Babocomori."

This decree and record fully sustains the claim set up in this case by showing conclusively that "San Ignacio del Babocomori" *had passed into private ownership* in good faith and by such legal acts and formalities as bound Sonora to make the title good in law if it was not complete in form. This decree was one of divestiture of title and its investiture in purchasers who were innocent, if any further act or declaration was necessary.

39. No act of these purchasers and no omission or neglect of theirs can be cited from the evidence to show laches or covin on their part. They are in court with clean hands petitioning for just rights.

40. Immediately upon the completion of this purchase the Eliases proceeded to establish their rancho at the place called "Ignacio del Babocomori." They built houses there and had a *major domo*, with his family, to reside on the land, with other herdsmen in charge of large herds of horses and cattle, and that possession was maintained by them with strong hand against hostile Indians and by their successors against the scarcely less savage intruders; and this compliance with their covenants has cost the expenditure of much labor and money and human life. Not for a day has this rancho ever been abandoned by its owners. When

Congress gave to the trespassing squatters on this rancho the sanction of a legalized right of occupancy the contention for title and possession necessarily became a question proper for the courts. Not content with this form of security and shelter against honest owners, these persons have constantly resorted to violence to protect their unlawful trespass and have killed those who went on the lands to examine or survey them.

This fact is established in all the depositions that relate to the subject. Even Flipper, whose clientage is among the squatters and makes himself conspicuously active in his efforts to destroy the rights of honest purchasers in his pretended zeal for the United States, was afraid to attempt an actual survey of the land in question. He preferred to rest his opinions upon a blackboard demonstration of the scraps of engineering information he had picked up in a partial military education at West Point and his knowledge of the Spanish language obtained in his association with the mixed races of white men, Mexicans, negroes, and Indians that inhabit this wild frontier; but even Mr. Flipper found the landmarks and piles of stones collected for monuments of the old Mexican survey made seventy years before he was ever on that soil.

He found it impossible to read intelligently the field-notes of the unskilled alcalde, but he could still trace the center line of the survey as the alcalde had established it and as every one else has recognized it from that day to this, and he found nearly every pile of stones and all but one of the natural monuments described in the field-notes of the alcalde.

Flipper's testimony, without being so intended, gives very strong support to the survey of the alcalde.

Mexico did not intend to convey to the United States as against the citizens of Sonora, with whom she was about to part with mutual and deep regret, any right to lands held by them in good faith; and this is the spirit of the treaty for the Gadsden purchase. This is the true intent of that treaty.

At the date of that treaty the Republic of Mexico had no right in law or equity to the "Place San Ignacio del Babocomori," and that government had no intention and no right to drive the owners from their lands and to resume the title or the possession thereof.

If Mexico had no such purpose or right as against her people in Sonora, the treaties with the United States prohibited us from setting up a claim as a sovereign power that Mexico had no right to assert.

Under the treaties and under the act of 1891 the United States have consented to be sued in our courts as to any of these alleged rights of the Mexicans, and have empowered those courts with full equity jurisdiction in reference to all such matters. Under that authority the Supreme Court and the Land Court can make any decree that justice may require to protect the interests of all concerned.

The courts have express authority to cause surveys to be made and to execute a sale or grant of land by Mexico, in whole or in part, according to the very right of the matter. If the survey of this land by the alcalde is not exact—if he has made a mistake as to the quantity of land included in the metes and bounds designated by him or in any form of proceeding—still enough is left of record that is undisputed to enable a court of equity to do justice to innocent pur-



chasers who have done all they could to comply with the laws in their payment for the land, in protecting it and the neighboring country from the depredations of hostile Indians in order to promote a necessary public policy, and in maintaining a force there that has protected the lives and food of the people.

Continued possession without any thought of abandonment for sixty years, and the payment of large sums for taxes and for permanent improvements, without objection from Sonora or Mexico or the United States, or any intimation of an adverse claim from any source, establishes a prescriptive right to this land that is coextensive with the area so occupied and claimed that a subsequent purchaser must respect, whether the purchaser is a government or only a private person. The United States cannot rely on the maxim "*nullus tempus occurrit regi*," because the treaty concedes to Mexican claimants the right to set up title by prescription against the Government.

JOHN T. MORGAN,

*Attorney for Appellant.*

1. 30.  
*Brief of Meredith for Appellants.*

JAN 3 1898  
JAMES H. MCKENNEY  
CLERK

30  
*Filed Jan. 3, 1898.*

IN THE SUPREME COURT OF THE UNITED STATES.

(October Term, 1897, No. ....)

ROBERT PERRIN

VS.

THE UNITED STATES ET AL.

Argument of J.H. Meredith for Appellants.

Filed this ..... day of January, 1898.

By ..... Clerk.

Deputy Clerk.

IN THE  
SUPREME COURT  
OF THE  
UNITED STATES.

---

ROBERT PERRIN

VS.

THE UNITED STATES ET AL.

Argument of J. H. Meredith for  
Appellants.

---

The court below disposed of this along with a group of similar cases adversely to the respective claimants.

No written opinion was delivered in this particular case, but the Court in orally announcing its decision held that the State of Sonora did not have the power to grant the public lands. It was also contended by counsel for the United States that this grant was void for the reason also that it exceeded four sitios; and that the distances from the center monument to the

several boundary monuments, as contended for by the claimant, were much greater than is stated in the original survey upon which the grant was made, thus seeking to call in question the identity of the boundaries as shown by our proofs.

Presuming that these points will be again raised against the grant, we will address ourselves to them.

# I.

The State of Sonora had the power to make grants of land.

This Court will take judicial notice of the laws and customs of Mexico on this subject. The courts of a country acquiring territory from another will, without proof, take notice of the laws and customs of the former sovereignty as they existed before the cession in so far as they may affect rights arising in the ceded territory. It is unnecessary, therefore, that the record in this case should contain proofs of such laws and customs.

In considering what was the law prevailing in this territory before its acquisition by the United States, it should be borne in mind that in Mexico the written law was meager and lacking in precision, and that there were no reports of adjudicated cases. Much was left to custom and to the discretion of the higher officers.

It was the custom universally followed for the several States to sell the public lands within their respective limits, and this custom was acquiesced in by all the officers of the republic, whose duty it would have been to challenge the validity of the sales had they been illegal. Neither the legislative, the judiciary or the executive ever called them in question, nor was there any attempt made to dispose of the lands in any other way.

We quote an extract from an opinion of Mr. R. C. Hopkins, the whole of which opinion is set forth in a

brief of Senator Morgan on file in this cause. Mr. Hopkins was for many years keeper of the Spanish archives, an office created by the United States expressly to preserve and to explain and translate the Spanish and Mexican archives relating to the vast number of grants comprised within California. His knowledge on such subjects has received praise from the Supreme Court of California in the reports of that Court. The following is the extract:

"From all that can be gathered from the political history of Mexico, and from the customs of the country in surveying lands, as shown by the records, it is seen:

"First. That the State of Sonora was, under the law of the 4th of August, 1824, authorized to dispose of the public lands lying within the limits thereof: and

"Secondly. That the tract of land called San Ygnacio del Babacomari, sold to Ygnacio and Eulalia Elias, was segregated from the public domain by a survey made in accordance with the usual customs of the country, and that the locus of the tract surveyed was much more definitely fixed than were the boundaries of most of the grants in California about the same time."

The fact that in not one of the large number of cases now before this Court, including the case of Ainsa vs. U. S., already decided, in all of which the grants were made by the State of Sonora or its predecessor, the State of the West, has the central government made the grant, goes to show what the custom was.

The central government expressly recognized the ownership and the right to sell the vacant lands on the part of the State. The law of April 6th, 1830, provides:

"Article 3. The government shall appoint one or more commissioners whose duty it shall be to visit the colonies of the frontier States; to contract with the legislatures of said States for the purchase by the na-

tion of lands suitable for the establishment of new colonies of Mexicans and foreigners; to enter into such arrangements as they may deem proper for the security of the Republic with the colonies already established; to watch over the exact compliance of the contracts of new colonists, and to investigate how far the contracts already made have been complied with."

Finding as we do in all these cases, and in the particular case under consideration, that officers of the State, in the name of the State, actually exercised the power of disposing of vacant lands for the public benefit, we are to presume *prima facie* that they lawfully exercised such powers. The burden of showing the contrary is upon those questioning the right. These were public officers, if they were systematically violating their duty, they would, of course, be liable to punishment or removal. Their acts in this behalf were public and notorious. The language used by this Court is pertinent.

United States v. Arredondo, 6 Pet., 714.

" There is another source of law in all governments—  
 " usage, custom—which is always presumed to have  
 " been adopted with the consent of those who may be  
 " affected by it. In England, and in the States of this  
 " Union which have no written constitution, it is the  
 " Supreme law; always deemed to have had its origin  
 " in an Act of a State Legislature of competent power  
 " to make it valid and binding, or an Act of Parlia-  
 " ment; \* \* \* the Court not only may, but is bound to  
 " notice and respect general customs and usage, as the  
 " law of the land, equally with the written law, \* \* \*  
 " such would be our duty under the Act of 1824, though  
 " its usages and customs were not expressly named as  
 " a part of the laws or ordinances of Spain."

The disposition of these vast tracts of land may be considered historical, and as such may be referred to in argument, although forming no part of the record. The exterior limits within which Nogales grant was comprised, which grant, like all the others, was made by the State of Sonora, and which was before this Court in the case of *Ainsa v. U. S.*, lay partly in the ceded territory and partly upon the Mexican side of the adjusted boundary. Now that grant was for four sitios or leagues within boundaries containing more than said quantity. Sufficient land to suffice the grant lay within Mexico, after the treaty. The Mexican authorities, out of this portion, laid off and delivered to the grantee four sitios, thus fulfilling the grant and recognizing the authority of the State to have made it.

This Court, in said case, did not refer to these facts, but they were in the record; and may have influenced the Court in rejecting the grant, because, otherwise, it would have resulted that the grantee would twice have gotten all that was originally intended to be given.

We may reasonably argue that the authority of the decision in said case is in our favor, upon the authority to make the grant. This, of course, was the first question, and the most important and general, presented in the record in said case. The Court does not base its conclusion upon the point that there was no authority to make the grant, as it would naturally have done, had it deemed the objection well taken; but it rather assumed that the grant was valid, but, being unlocated, was not one of those provided for in the treaty, and therefore, however valid, not within the jurisdiction of the Court of Private Land Claims. The said Court being expressly limited in its jurisdiction to the consideration of those grants referred to in the treaty.

## II.

The power of the several states of Mexico to dispose of the public lands within their respective borders can be upheld by other reasons than usage and custom; by reasons depending upon the nature of the Mexican Government. It resembles our own, was modeled upon it. Its name is the United States of Mexico. The states are sovereign, subject to the powers of the general government.

The right to dispose of public lands is an attribute of sovereignty, and, as to such lands within its borders, it vests in any one of the states of this Union, or of the United States of Mexico, unless there be something in the Constitution or laws of the respective countries to the contrary.

In our own Union we find that the original Thirteen States sold and issued patents for the public lands; and the titles thereunder have never been questioned. Yet there is nothing in the Federal Constitution or in the Acts of Congress giving such right. It has been treated as an ordinary act of sovereignty. Much of the lands in New York, Virginia and other states was disposed of in this manner. The right of the United States to dispose of much of the land in Ohio and other adjoining states arose only upon a grant made by the State of Virginia to the United States.

With respect to the states since admitted into the Union, the same result would have taken place were it not that the various Acts of Congress admitting them contained express conditions on the subject. The Act admitting California may be taken as an instance. Section 3, of the Act for the Admission of California, approved September 9, 1850, provides, "And it is further enacted, That the said State of California is admitted into the Union upon the express condition that the



“ people of said State, through their Legislature, or  
 “ otherwise, shall never interfere with the primary dis-  
 “ posal of the public lands within its limits, and shall  
 “ pass no law and do no act whereby the title of the  
 “ United States to, and right to dispose of, the same  
 “ shall be impaired or questioned.”

We are not, however, left to custom, acquiescence and recognition, nor to the sovereign attributes of the states on this subject. The Act of Congress of Mexico of August 18, 1824, is as follows:

“The Sovereign General Constituent Congress of the  
 “ United Mexican States has been pleased to decree:

“ 1st. The Mexican Nation promises to those  
 “ foreigners who may come to establish themselves in  
 “ its territory, security in their persons and property,  
 “ provided, they subject themselves to the law of the  
 “ country.

“ 2nd. The objects of this law are those national lands  
 “ which are neither private property nor belong to any  
 “ corporation or pueblo, and can therefore be colonized.

“ 3rd. To this end the Congress of the States will  
 “ form, as soon as possible, the laws and regulations of  
 “ colonization of their respective demarcation with en-  
 “ tire conformity to the constitutive act, the general  
 “ constitution and the rules established in this law.

“ 4th. Those territories comprised within twenty  
 “ leagues of the boundaries of any foreign nation, or  
 “ within ten leagues of the sea coast, cannot be colo-  
 “ nized without the previous approval of the supreme  
 “ general executive power.

“ 5th. If, for the defense or security of the nation, the  
 “ Federal Government should find it expedient to make  
 “ use of any portion of these lands for the purpose of con-  
 “ structing warehouses, arsenals or other public edi-  
 “ fices, it may do so, with the approbation of the Gen-

“eral Congress, or, during its recess, with that of the Government Council.

“6th. Before the expiration of four years after the publication of this law, no tax or duty (*direcho*) shall be imposed on the entry of the persons of foreigners, who come to establish themselves for the first time in the nation.

“7th. Previous to the year 1840, the General Congress cannot prohibit the entry of foreigners to colonize, except compelled to do so, with respect to the individuals of some nation, by powerful reasons.

“8th. The Government, without prejudicing the object of this law, will take the precautionary measures which it may consider necessary for the security of the Federation, with respect to the foreigners who may come to colonize. In the distribution of lands, Mexican citizens are to be attended to in preference, and no distinction shall be made amongst these, except such only as is due to private merit and services rendered to the country or inequality of circumstances, residence in the place to which the lands distributed belong.

“10th. Military persons, who are entitled to lands by the promise made on the 27th day of March, 1821, shall be attended to by the States, on producing the diplomas granted to them to that effect by the supreme executive power.

“11th. If, by the decrees of capitulation, according to the probabilities of life, the supreme executive should see fit to alienate any portion of land in favor of any military or civil officers of the Federation, it may so dispose of the vacant lands of the *territories*.

“12th. No one person shall be allowed to obtain the ownership of more than one league square, of five thousand varas (5000 v.) of irrigable land (*de regadio*)

“ four superficial ones of land dependent on the sea-  
 “ sons (de temporal) and six superficial ones for the  
 “ purpose of rearing cattle (de abreradiso).

“13th. The new colonists cannot transfer their pos-  
 “ sessions in mortmain (manos muertas).

“14th. This law guarantees the contracts which the  
 “ grantees (empressarios) may make with the families  
 “ which they may bring out at their expense; provided  
 “ they be not contrary to the laws.

“15th. No one who, by virtue of this law, shall ac-  
 “ quire the ownership of lands, shall retain them if he  
 “ shall reside out of the territory of the republic.

“16th. The Government, in conformity with the prin-  
 “ ciples established in this law, will proceed to the  
 “ colonization of the *territories* of the republic.”

It will be observed that this Act, not merely purports to confer, but recognizes, as already existing, the power of the States to dispose of vacant lands; and it also shows that it was the policy anxiously fostered by Government to encourage the settlement of vacant lands. And, after providing with much detail for the disposal of them by the several States within their respective limits, the Act goes on in the 16th section to provide and declare that the same policy will be pursued by the Central Government respecting the vacant lands in the *territories*.

In compliance with the provisions of this law the State of the West, the predecessor of the State of Senora, passed the following law:

“ The Constituent Congress of the free, independent  
 “ and sovereign State of the West has seen fit to decree  
 “ the following provisional law for the regulation of  
 “ the purchase of the lands of the State.

**" FEES FOR THE TREASURY OF THE STATE.**

" Art. 1. For each dry sitio that can only serve for  
" pasturing stock, ten dollars.

" Art. 2. For those where well water can be ob-  
" tained, thirty dollars.

" Art. 3. For those that have spring or river, sixty  
" dollars.

" Art. 4. The values designated in the preceding  
" articles are considered the minimum for sitios, which  
" can in no case be reduced.

**" FEES OF SURVEYORS.**

" Art. 5. For the survey of one sitio, twenty-five  
" dollars.

" Art. 6. For that of two for the same party, thirty-  
" seven dollars, four reals.

" Art. 7. For that of three for the same party, fifty  
" dollars.

" Art. 8. For that of four for the same party,  
" sixty-two dollars, four reals.

" Art. 9. When the surveyor surveys several si-  
" tios, but for different parties, when they do not ex-  
" ceed one for each applicant, he shall charge twenty-  
" five dollars.

" Art. 10. For proclamations and management, up  
" to putting the expediente in condition for final sale,  
" twenty-five dollars.

" Art. 11. Stamped paper shall be at the expense  
" of the parties interested.

**" FEES FOR THE LAST PUBLIC OFFER.**

" Art. 12. For three proclamations of the last pub-  
" lic offer and sale, six dollars.

" Art. 13. For the opinion of the Attorney-General,  
" three dollars.

“ Art. 14. For the drum and proclamations, two  
“ dollars.

“ Art. 15. The title shall be given gratis.

“ Art. 16. Stamped paper is at the expense of the  
“ parties in interest, to whom nothing shall be charged  
“ for the notices and formal proceedings customary in  
“ the last public offers.

#### “GENERAL PROVISIONS.

“ Art. 17. The surveyors shall be the Alcaldes  
“ (mayors) of the towns to whose jurisdiction belong the  
“ sitios registered, but with the authority which the  
“ Treasurer-General shall previously delegate to them  
“ for the purpose.

“ Art. 18. To this end the parties in interest shall  
“ present themselves directly to the Treasurer-General,  
“ and he shall make the proper delegation at the end  
“ of the application.

“ Art. 19. The Treasurer, as the immediate head  
“ (chief) of all the revenues, shall make the sales (and),  
“ give the titles.

“ Art. 20. The Collector of Revenues at the capital  
“ shall always be the Attorney-General.

“ Art. 21. To no one who is a new breeder shall  
“ more than four sitios be given.

“ Art. 22. To those who, from the abundance of  
“ their stock, need more, although old breeders, the  
“ Treasurer-General shall grant only so much more as  
“ they may need.

“ Art. 23. The Treasurer shall endeavor, by all the  
“ means in his power, to satisfy himself of the truth,  
“ before making the grant which the preceding article  
“ prescribes, and the party in interest shall take no  
“ part in the steps he may take to secure that end.

“ Art. 24. No one shall obtain any sitio for live  
 “ stock without first proving, in the opinion and to the  
 “ satisfaction of the Attorney-General, that he has suf-  
 “ ficient to be called a breeder.

“ Art. 25. The Treasurer, to verify the truth, for  
 “ the purpose to which the preceding article refers,  
 “ may order an investigation made, or such secret in-  
 “ formation taken, as may occur to him.

“ Art. 26. For the valuation that should be made  
 “ of the sitios, on the basis of the value which the law  
 “ prescribes for them the Surveyor-Alcaldes shall ap-  
 “ point persons entirely impartial to the interested  
 “ parties, and they shall, after being informed of their  
 “ obligations, proceed to discharge their commission,  
 “ with attention to the more or less fertility of the  
 “ lands, their location and other circumstances, in or-  
 “ der to give them the value they justly deserve.

“ Art. 27. Those who possess sitios, and who, al-  
 “ though they have them registered and surveyed, have  
 “ not obtained the title, shall present themselves to the  
 “ Treasurer-General and shall state in writing the  
 “ cause of that failure, the deputy or Judge who sur-  
 “ veyed them for them, and the outlays they have made.

“ Art. 28. The Treasurer shall fix, for this purpose,  
 “ the time that seems to him proper, and, as soon as he  
 “ gets all the information together, shall render a re-  
 “ port to the Government, which shall order the  
 “ proper steps taken, with regard to the rights of the  
 “ parties interested and the interests of the treasury.

“ Art. 29. The Treasurer shall give the necessary  
 “ methods and instructions to his surveyors, that the  
 “ surveys may be legal and correct.

“ Art. 30. It shall be the obligation of owners of  
 “ sitios to place at their bounary termini the monu-  
 “ ments of stone and mortar ordered in repeated laws,

"as soon as possession thereof is given them; and, if  
 "within three months from the day the survey is con-  
 "cluded they do not do so, they shall incur a fine of  
 "twenty-five dollars, which the Surveyor-Judge shall  
 "exact of them, for the public funds, and besides  
 "shall order the monuments constructed at the ex-  
 "pense of the parties interested.

"Art. 31. Those who have an order for the registry  
 "of sitios under the former practice, are guaranteed  
 "under this law.

"Art. 32. The tax for army expenses, the half an-  
 "nata tax, and the percentage which the former Gov-  
 "ernment collected as a general tax, are abolished."

The sale of vacant lands has always been one of the  
 largest sources of revenue in all Spanish American  
 countries. The Republic of Mexico in reserving certain  
 sources of revenue and income, for the Central Govern-  
 ment expressly provides that all other revenues belong  
 to the states.\* The Act of the General Congress of  
 Mexico, of Aug. 4th, 1824, provides as follows:

"8. That of the territories of the Federation.

"9. The national property, in which are included  
 "those of the inquisition, and the temporalities, and  
 "all the properties which belong to the public treasury.

"10. There shall vest in the disposal of the Federal  
 "Government the buildings, offices and lands thereto  
 "annexed, which pertain to, or have pertained to, the  
 "general revenue, and those which have been built at  
 "the expense of two or more provinces.

"11. The revenues which are not included in the  
 "foregoing articles belong to the states."

It will be observed that this Act seems to take for  
 granted that these revenues already belong to the  
 states.

We are unable to find any law of the Republic of Mexico asserting ownership by the Nation of vacant lands in the states. The Constitutive Act of 1824 contains no such assertion.

See White's Recopilacion, Vol. 1, p. 374.

Nor does the General Constitution of 1824, see p. 387.

But we do find that the various states claimed such lands by the express language of their constitutions.

Con. Texas and Coahuila, Art. 10.

Con. State of Mexico, Art. 10.

Con. Neuvo Leon, Arts. 2, 3, 4.

Con. Puebla, Art. 14.

Con. San Luis Potosi, Arts. 2, 3.

Con. Chihuahua, Art. 36, Secs. 2-7.

Con. Senora.

When the central system was adopted in Oct., 1835, the states were in effect abolished, and we find for the first time any assertion on the part of the Nation to dispose of any of the public lands.

Reynolds, p. 195 to 225.

This condition of the Mexican Government extended to Aug. 22, 1846, at which time the Constitution of 1824 was provisionally re-established, and on May 18, 1847, the Act of the Constitutional Reforms was enacted, which reinstated the Mexican Republic as it was under the Constitution and Constitutive Act of 1824. The preamble of this Act of the Constitutional Reforms contains the following:

"I. That the States which compose the Mexican Union have recovered the independence and sovereignty that were reserved to them in the Constitution for their interior administration.



" II. That said States continue united under the  
 " compact that at one time constituted the political  
 " mode of being of the United States of Mexico.

" III. That the Constitutive Act and the Federal  
 " Constitution, sanctioned on the 31st of January, and  
 " the 4th of October, 1824, form the only political Con-  
 " stitution of the Republic.

" Reynolds, p. 281."

As this Act of Constitutional Reforms contains no provision for the power on the part of the Federal Government to dispose of vacant lands within the several states, it is conclusively shown by Section 21 that no such power existed. Sec. 21 is as follows:

" 21. The powers of the Union derive all from the  
 " Constitution, and are limited solely to the exercise of  
 " the powers expressly designated in the same, and it  
 " shall not be understood that others are granted in the  
 " absence of express restriction."

The ownership of the states is recognized in a communication by the Federal Government on Aug. 30, 1849, to the Governor of the State of Sonora. It is as follows:

" Most Excellent Sir: The Supreme Government is  
 " informed that, on account of the disturbances in Up-  
 " per California, especially in the gold placers, robbery  
 " and murders have increased, and that the hatred of  
 " Mexicans, Spaniards and Chilians has gone so far as  
 " to prevent their living there, and that they have been  
 " forcibly compelled to re-embark, and further informa-  
 " tion has been added to this which indicates that in  
 " that country there are no social guarantees.

" This has attracted the attention of his Excellency,  
 " the President, and he therefore directs me to say to  
 " your Excellency that he expects you to do all that is

“ possible to attract to yourself this population, in the  
 “ understanding that public lands will be given to the  
 “ emigrants on credit, and that, if that State does not  
 “ cede them gratuitously, or if the emigrants cannot  
 “ pay, it will be given them, nevertheless, as the Gen-  
 “ eral Government obligates itself to indemnify said  
 “ State in the manner to be determined at the proper  
 “ time by the General Congress.

“ God and Liberty, Mexico, August 30th, 1849, LA-  
 “ CUNZA.

“ Reynolds, p. 294.”

### III.

Some objection was made to our proofs of the boundaries of the grant; upon the ground that the distances from the center monuments to the exterior ones appear to be greater than those mentioned in the original grant. To this we reply,

First. That the monuments are natural land marks and courses and distances must yield to their location. And the customs and open air life of the Mexican people are such that they rarely or never are mistaken in the identity of a mountain, a spring, or other natural landmark.

Secondly. The circumstance that a larger area than eight sitios was included within the grant was distinctly called to the attention of the Treasurer-General, and, acting under the powers conferred by Article 25, he nevertheless made the grant. Under said provisions he was permitted to make grants of larger area than four sitios to each grantee. His attention was directed to the fact that the boundaries of this grant included more than eight sitios. If the distances mentioned in the original grant should be taken as correct, the area

would be just eight sitios and the circumstance that the area was more than eight sitios could only result from the fact that the distances from the center to the exterior were greater than those mentioned in the rude survey. The question is thus narrowed to the proposition whether the Treasurer-General had the power to grant more than four sitios to each grantee. The exercise of his discretion in this behalf cannot be inquired into.

Thirdly. The whole point is regard to the survey, as proved by us, is based upon the language used by this court in the case of *Ainsa v. the United States*. The Court in that case proceeded upon the assumption that the English version of the treaty was a correct translation of the Spanish. The word "located" is not a correct translation of the word "inscrita." It scarcely needs a dictionary to show that the meaning of the word "inscrita" is "in writing." Of course, both versions of the treaty are original; but this Court, in the case of *Arredondo v. the United States*, in considering the treaty with Spain which effected the Florida purchase, declared that in interpreting that portion of the treaty which related to Spanish grants, the Spanish language should prevail over the English in interpreting the treaty.

Fourthly. If for a moment it could be argued that our proofs are not full upon the identity or location of the great natural landmarks which delineate the land in the original grant, we respectfully submit that, as the whole group of grants went off in the court below upon the question of the power of the Mexican States, we should, if this ruling of the court below be reversed, have the opportunity to amplify our proofs. The act giving the right of appeal to this Court provides that upon the appeal every question of fact and law shall be open. We also submit that there is absolutely no con-

tradiction of our witnesses in the record as to the natural monuments. Only some doubt is sought to be cast upon the artificial piles of stones.

This Court, in the decision in the Nogales case, did not intimate or suggest that the grant was invalid, but merely said that the jurisdiction of the Court of Private Land Claims did not extend to unlocated grants, that is grants of quantity within larger exterior limits. The sacred obligation of the United States would require the recognition of all grants, located or unlocated, which were valid under the laws of usages and customs of Mexico. There are many Congressional grants made by the United States which were unlocated when made and their validity has never been questioned. So, also, a fair half of all the Mexican grants made within the area of California were unlocated, being grants of limited quantity to be laid off within areas embracing more lands than the quantity granted. Such grants have been sustained by this Court and such grants, like the Nogales grant, within the territory comprised within the Gadsden Treaty would likewise have been sustained by this Court, were it not for the fact that the Court, mistakenly following the English version of the treaty, deemed the Court of Private Land Claims to be restricted to such grants as were located.

Now, let us assume, which is indeed the fact, that grants of limited quantity of land to be laid off within larger areas were perfectly valid under the laws of Mexico, would it not be the duty of the United States, regardless of treaty stipulations, to protect such grants under the law of nations? It might well be that Congress in creating the Court of Private Land Claims might restrict its jurisdiction; but the sacred obligation on the part of the Government would still remain.

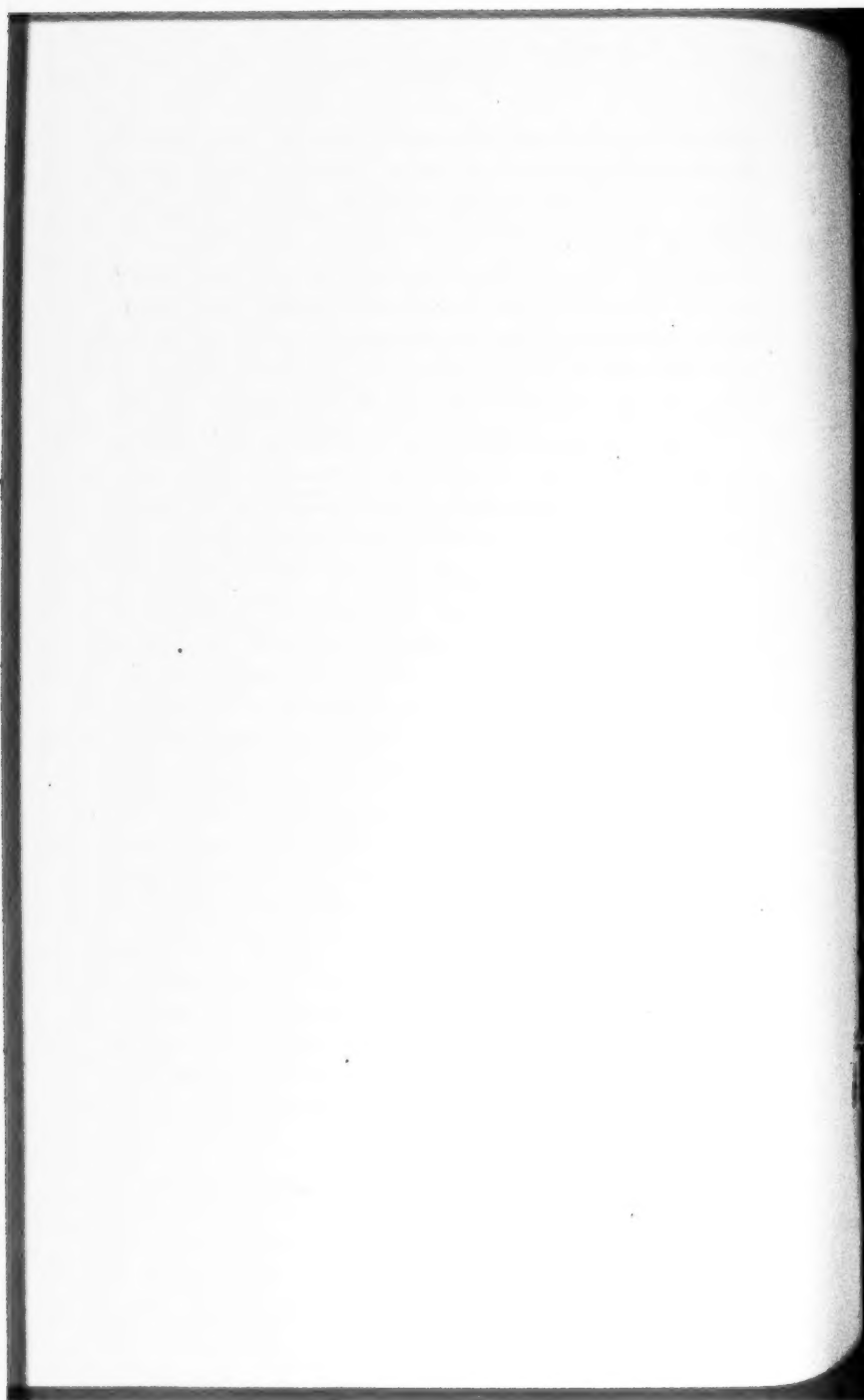
When the attention of this Court is called to the erroneous translation of the word "inscrita," we re-

spectfully submit that it will not hesitate to uphold a grant valid under the laws of Mexico and coming within the description of those provided for in the Gadsden Treaty.

The Act of Congress, under which this proceeding was had, provides that if the grant be confirmed a survey of the same shall be made by the United States; if, therefore, there be any doubt as to the boundaries of the grant, provision is made for the true determination of the boundaries by the Act of Congress under consideration.

Touching the point that the decree of Santa Ana of Nov. 25th, 1853, annulled all the State grants, it is submitted, first, that this decree transcended the powers of Santa Ana. He was the chief executive, and there was nothing in the plan or constitution of Guadajara and Jalisco which invested him with judicial powers; and, indeed, if such powers had been so extended, it would still be far beyond the limits of judicial action to promulgate a general decree taking away private property without a hearing. It would require very clear and explicit language in a constitution to give such a power. But it is contended that as he had assumed to do so, and as the treaty was negotiated with him, the United States is committed to the validity of all of his preceding acts. We do not see upon what reasoning this is based. Besides, such a proposition is inconsistent with the treaty itself. As far as our investigation goes, every grant in the ceded strip of territory was a State grant, and under the contention would have been annulled; yet the treaty contains careful provisions for their protection. Respectfully submitted,

J. H. MEREDITH,  
Counsel for Appellants.



*Case No. 10,000*

Case No. 10,000

**Supreme Court of the United States**

ROBERT F. WALLIS

THE UNITED STATES ET AL.

ARGUMENT OF SYLVAN & BERKELEY FOR  
APPELLANT

---

Sylvan & Berkeley, Patent Attorneys, D.C. 10,000

IN THE  
**Supreme Court of the United States.**

---

ROBERT PERRIN

vs.

THE UNITED STATES ET AL.

---

**ARGUMENT OF EVANS & MEREDITH FOR  
APPELLANT.**

---

The court below disposed of this, along with a group of similar cases, adversely to the respective claimants.

No written opinion was delivered in this particular case, but the court in orally announcing its decision held that the State of Sonora did not have the power to grant the public lands. It was also contended by counsel for the United States that this *particular* grant was void for the reason, also, that it exceeded four sitios, and that the distances from the center monument to the several boundary monuments, as contended for by the claimant, were much greater than is stated in the original survey upon which the grant was made, thus seeking to call in question the identity of the boundaries as shown by our proofs.

Presuming that these points will be again raised against the grant, we will address ourselves to them.



## I.

The State of Sonora had the power to make grants of land.

This Court will take judicial notice of the laws and customs of Mexico on this subject. The courts of a country acquiring territory from another will, without proof, take notice of the laws and customs of the former sovereignty as they existed before the cession in so far as they may affect rights arising in the ceded territory. It is unnecessary, therefore, that the record in this case should contain proofs of such laws and customs.

In considering what was the law prevailing in this territory before its acquisition by the United States, it should be borne in mind that in Mexico the written law was meager and lacking in precision, and that there were no reports of adjudicated cases. Much was left to custom and to the discretion of the higher officers.

It was the custom universally followed for the several States to sell the public lands within their respective limits, and this custom was acquiesced in by all the officers of the Republic, whose duty it would have been to challenge the validity of the sales had they been illegal. Neither the legislative, the judiciary, or the executive ever called them in question, nor was there any attempt made to dispose of the lands in any other way.

We quote an extract from an opinion of Mr. R. C. Hopkins, the whole of which opinion is set forth in a brief of Senator Morgan on file in this cause. Mr. Hopkins was for many years keeper of the Spanish archives, an office created by the United States expressly to preserve and to ex-

plain and translate the Spanish and Mexican archives relating to the vast number of grants comprised within California. His knowledge on such subjects has received praise from the supreme court of California in the reports of that court. The following is the extract :

" From all that can be gathered from the political history of Mexico and from the customs of the country in surveying lands, as shown by the records, it is seen :

" First. That the State of Sonora was, under the law of the 4th of August, 1824, authorized to dispose of the public lands lying within the limits thereof; and,

" Secondly. That the tract of land called San Ygnacio del Babacomari, sold to Ygnacio and Eulalia Elias, was segregated from the public domain by a survey made in accordance with the usual customs of the country, and that the locus of the tract surveyed was much more definitely fixed than were the boundaries of most of the grants made in California about the same time."

The large number of cases now before this Court and the case of *Ainsa vs. U. S.*, already decided, in all of which the grants were made by the State of Sonora or its predecessor, the State of the West, the fact that in not one of them has the central government made the grant goes to show what the custom was.

The central government expressly recognized the ownership and the right to sell the vacant lands on the part of the State. The law of April 6, 1830, provides :

"Article 3. The government shall appoint one or more commissioners whose duty it shall be to visit the colonies of the frontier States; to contract with the legislatures of said States for the purchase by the nation of lands suitable for

the establishment of new colonies of Mexicans and foreigners; to enter into such arrangements as they may deem proper for the security of the Republic with the colonies already established; to watch over the exact compliance of the contracts of new colonists, and to investigate how far the contracts already made have been complied with."

Finding as we do in all these cases, and in the particular case under consideration, that officers of the State, in the name of the State, actually exercised the power of disposing of vacant lands for the public benefit, we are to presume *prima facie* that they lawfully exercised such powers. The burden of showing the contrary is upon those questioning the right. These were public officers; if they were systematically violating their duty, they would, of course, be liable to punishment or removal. Their acts in this behalf were public and notorious. The language used by this Court is pertinent (*United States vs. Arredondo*, 6 Pet., 714):

"There is another source of law in all governments—usage, custom—which is always presumed to have been adopted with the consent of those who may be affected by it. In England, and in the States of this Union which have no written constitution, it is the supreme law; always deemed to have had its origin in an act of a State legislature of competent power to make it valid and binding, or an act of Parliament. \* \* \* The court not only may, but is bound to, notice and respect general customs and usage as the law of the land equally with the written law. \* \* \* Such would be our duty under the act of 1824, though its usages and customs were not expressly named as a part of the laws or ordinances of Spain."

The disposition of these vast tracts of land may be considered historical, and as such may be referred to in argu-

ment, although forming no part of the record. The exterior limits within which the Nogales grant was comprised, which grant, like all the others, was made by the State of Sonora, and which was before this Court in the case of *Ainsa vs. United States*, lay partly in the ceded territory and partly upon the Mexican side of the adjusted boundary. Now, this grant was for        sitios or leagues within boundaries containing more than said quantity. Sufficient land to suffice the grant lay within Mexico after the treaty. The Mexican authorities out of this portion laid off and delivered to the grantee the number of sitios stated in the grant, thus fulfilling the grant and recognizing the authority of the State to have made it.

This Court in that case did not refer to these facts; but they were in the record, and may have influenced the Court in rejecting the grant, because otherwise it would have resulted that the grantee would twice have gotten all that was originally intended to be given.

We may reasonably argue that the decision in that case is in our favor upon the authority to make the grant. This, of course, was the first question, and the most important and general, presented in the record. The Court does not base its conclusion upon the point that there was no authority to make the grant, as it would naturally have done had it deemed the objection well taken, but it rather assumed that the grant was valid, but being unlocated, was not one of those provided for in the treaty, and therefore, however valid, not within the jurisdiction of the court of private land claims, the said court being expressly limited in its jurisdiction to the consideration of those grants referred to in the treaty.

## II.

The power of the several States of Mexico to dispose of the public lands within their respective borders can be upheld by other reasons than usage and custom—by reasons depending upon the nature of the Mexican government. It resembles our own; was modeled upon it. Its name is the United States of Mexico. The States are sovereign, subject to the powers of the general government.

The right to dispose of public lands is an attribute of sovereignty, and as to such lands within its borders it vests in any one of the States of this Union or of the United States of Mexico, unless there be something in the constitution or laws of the respective countries to the contrary.

In our own Union we find that the original thirteen States sold and issued patents for the public lands, and the titles thereunder have never been questioned; yet there is nothing in the Federal Constitution or in the acts of Congress giving such right. It has been treated as an ordinary act of sovereignty. Much of the lands in New York, Virginia, and other States was disposed of in this manner. The right of the United States to dispose of much of the land in Ohio and other adjoining States arose only upon a grant made by the State of Virginia to the United States.

With respect to the States since admitted into the Union the same result would have taken place were it not the various acts of Congress admitting them contained the express conditions on the subject. The act admitting California may be taken as an instance. Section 3 of the act for the

admission of California, approved September 9, 1850, provides :

*"And it is further enacted, That the said State of California is admitted into the Union upon the express condition that the people of said State, through their legislature or otherwise, shall never interfere with the primary disposal of the public lands within its limits, and shall pass no law and do no act whereby the title of the United States to, and right to dispose of, the same shall be impaired or questioned."*

We are not, however, left to custom, acquiescence, and recognition, nor to the sovereign attributes of the States on this subject. The act of Congress of Mexico of August 18, 1824, is as follows :

"The sovereign general constituent Congress of the United Mexican States has been pleased to decree :

"1st. The Mexican nation promises to those foreigners who may come to establish themselves in its territory security in their persons and property, provided they subject themselves to the law of the country.

"2d. The objects of this law are those national lands which are neither private property nor belong to any corporation or pueblo, and can therefore be colonized.

"3d. To this end the Congress of the States will form, as soon as possible, the laws and regulations of colonization of their respective demarcation with entire conformity to the constitutive act, the general constitution, and the rules established in this law.

"4th. Those territories comprised within twenty leagues of the boundaries of any foreign nation, or within ten leagues of the seacoast, cannot be colonized without the previous approval of the supreme general executive power.

"5th. If, for the defense or security of the nation, the federal government should find it expedient to make use of

any portion of these lands for the purpose of constructing warehouses, arsenals, or other public edifices, it may do so, with the approbation of the General Congress, or, during its recess with that of the government council.

" 6th. Before the expiration of four years after the publication of this law, no tax or duty (*direcho*) shall be imposed on the entry of the persons of foreigners, who come to establish themselves for the first time in the nation.

" 7th. Previous to the year 1840, the General Congress cannot prohibit the entry of foreigners to colonize, except compelled to do so, with respect to the individuals of some nation, by powerful reasons.

" 8th. The government, without prejudicing the object of this law, will take the precautionary measures which it may consider necessary for the security of the federation, with respect to the foreigners who may come to colonize. In the distribution of lands, Mexican citizens are to be attended to in preference and no distinction shall be made amongst these, except such only as is due to private merit and services rendered to the country or inequality of circumstances, residence in the place to which the lands distributed belong.

" 10th. Military persons who are entitled to lands by the promise made on the 27th day of March, 1821, shall be attended to by the States, on producing the diplomas granted to them to that effect by the supreme executive power.

" 11th. If, by the decrees of capitulation, according to the probabilities of life, the supreme executive should see fit to alienate any portion of land in favor of any military or civil officers of the federation, it may so dispose of the vacant lands of the territories.

" 12th. No one person shall be allowed to obtain the ownership of more than one league square, of five thousand varas (5,000 v.) of irrigable land (*de regadio*) four superficial ones of land dependent on the seasons (*de temporal*) and six superficial ones for the purpose of rearing cattle (*de abrevadero*).

" 13th. The new colonists cannot transfer their possessions in mortmain (*manos muertas*).

" 14th. This law guarantees the contracts which the grantees (*empresarios*) may make with the families which they may bring out at their expense; provided they be not contrary to the laws.

" 15th. No one who, by virtue of this law, shall acquire the ownership of lands, shall retain them if he shall reside out of the territory of the Republic.

" 16th. The government, in conformity with the principles established in this law, will proceed to the colonization of the territories of the Republic."

It will be observed that this act not merely purports to confer, but recognizes as already existing, the power of the States to dispose of vacant lands, and it also shows that it was the policy anxiously fostered by the government to encourage the settlement of vacant lands; and after providing with much detail for the disposal of them by the several States within their respective limits, the act goes on, in the sixteenth section, to provide and declare that the same policy will be pursued by the central government respecting the vacant lands in the territories.

In compliance with the provisions of this law, the State of the West, the predecessor of the State of Sonora, passed the following law :

"The constituent congress of the free, independent and sovereign State of the West has seen fit to decree the following provisional law, for the regulation of the purchase of the lands of the State.



*" Fees for the Treasury of the State.*

"Art. 1. For each dry sitio that can only serve for pasturing stock, ten dollars.

"Art. 2. For those where well water can be obtained, thirty dollars.

"Art. 3. For those that have spring or river, sixty dollars.

"Art. 4. The values designated in the preceding articles are considered the minimum for sitios, which can in no case be reduced.

*" Fees of Surveyors.*

"Art 5. For the survey of one sitio, twenty-five dollars.

"Art. 6. For that of two for the same party, thirty-seven dollars four reals.

"Art. 7. For that of three for the same party, fifty dollars.

"Art. 8. For that of four for the same party, sixty-two dollars four reals.

"Art. 9. When the surveyor surveys several sitios, but for different parties, when they do not exceed one for each applicant, he shall charge twenty-five dollars.

"Art. 10. For proclamations and management, up to putting the expediente in condition for final sale, twenty-five dollars.

"Art. 11. Stamped paper shall be at the expense of the parties interested.

*" Fees for the Last Public Offer.*

"Art. 12. For three proclamations of the last public offer and sale, six dollars.

"Art. 13. For the opinion of the attorney general, three dollars.

"Art. 14. For the drum and proclamations, two dollars.

"Art. 15. The title shall be given gratis.

"Art. 16. Stamped paper is at the expense of the parties in interest, to whom nothing shall be charged for the notices and formal proceedings customary in the last public offer.

*" General Provisions.*

"Art. 17. The surveyors shall be the alcaldes (mayors) of the towns to whose jurisdiction belong the sitios registered, but with the authority which the treasurer general shall previously delegate to them for the purpose.

"Art. 18. To this end the parties in interest shall present themselves directly to the treasurer general, and he shall make the proper delegation at the end of the application.

"Art. 19. The treasurer, as the immediate head (chief) of all the revenues, shall make the sales (and), give the titles.

"Art. 20. The collector of revenues at the capital shall always be the attorney general.

"Art. 21. To no one who is a new breeder shall more than four sitios be given.

"Art. 22. To those who, from the abundance of their stock, need more, although old breeders, the treasurer general shall grant only so much more as they may need.

"Art. 23. The treasurer shall endeavor by all the means in his power to satisfy himself of the truth, before making the grant which the preceding article prescribes, and the party in interest shall take no part in the steps he may take to secure that end.

"Art. 24. No one shall obtain any sitio for live stock without first proving, in the opinion and to the satisfaction of the attorney general, that he has sufficient to be called a breeder.

"Art. 25. The treasurer, to verify the truth, for the purpose to which the preceding article refers, may order an investigation made, or such secret information taken, as may occur to him.

"Art. 26. For the valuation that should be made of the sitios, on the basis of the value which the law prescribes for them, the surveyor alcaldes shall appoint persons entirely impartial to the interested parties, and they shall, after being informed of their obligations, proceed to discharge their commission, with attention to the more or less fertility of the lands, their location, and other circumstances, in order to give them the value they justly deserve.

"Art. 27. Those who possess sitios, and who, although they have them registered and surveyed, have not obtained the title, shall present themselves to the treasurer general and shall state in writing the cause of that failure, the deputy or judge who surveyed them for them, and the outlays they have made.

"Art. 28. The treasurer shall fix, for this purpose, the time that seems to him proper, and, as soon as he gets all the information together, shall render a report to the government which shall order the proper steps taken, with regard to the rights of the parties interested and the interests of the treasury.

"Art. 29. The treasurer shall give the necessary methods and instructions to his surveyors, that the surveys may be legal and correct.

"Art. 30. It shall be the obligation of owners of sitios to place at their boundary termini the monuments of stone and mortar ordered in repeated laws, as soon as possession thereof is given them; and, if within three months from the day the survey is concluded they do not do so, they shall incur a fine of twenty-five dollars, which the surveyor judge shall exact of them, for the public funds, and besides shall order the monuments constructed at the expense of the parties interested.

"Art. 31. Those who have an order for the registry of sitios under the former practice, are guaranteed under this law.

"Art. 32. The tax for army expenses, the half annata tax,

and the percentage which the former government collected as a general tax, are abolished."

The sale of vacant lands has always been one of the largest sources of revenue in all Spanish-American countries. The Republic of Mexico, in reserving certain sources of revenue and income for the central government, expressly provides that all other revenues belong to the States. The act of the General Congress of Mexico of August 4, 1824, provides as follows:

"8. That of the territories of the federation.

"9. The national property, in which are included those of the inquisition, and the temporalities, and all the properties which belong to the public treasury.

"10. There shall vest in the disposal of the federal government the buildings, offices and lands thereto annexed, which pertain to or have pertained to the general revenue, and those which have been built at the expense of two or more provinces.

"11. The revenues which are not included in the foregoing articles belong to the States."

It will be observed that this act seems to take for granted that these revenues already belong to the States.

We are unable to find any law of the Republic of Mexico asserting ownership by the nation of vacant lands in the States. The constitutive act of 1824 contains no such assertion.

See White's Recopilacion, vol. 1, p. 374.

Nor does the general constitution of 1824. (See p. 387.)

But we do find that the various States claimed such lauds by the express language of their constitutions.

Con. Texas and Coahuila, art. 10.

Con. State of Mexico, art. 10.

Con. Nuevo Leon, arts. 2, 3, 4.

Con. Puebla, art. 14.

Con. San Luis Potosi, arts. 2, 3.

Con. Chihuahua, art. 36, secs. 2-7.

Con. Sonora.

When the central system was adopted, in October, 1835, the States were in effect abolished, and we find for the first time any assertion on the part of the nation to dispose of any of the public lands.

Reynolds, pages 195 to 225.

This condition of the Mexican government extended to August 22, 1846, at which time the constitution of 1824 was provisionally re-established, and on May 18, 1847, the act of constitutional reforms was enacted, which reinstated the Mexican Republic as it was under the constitution and constitutive act of 1824. The preamble of this act of constitutional reforms contains the following:

"I. That the States which compose the Mexican Union have recovered the independence and sovereignty that were reserved to them in the constitution for their interior administration.

"II. That said States continue united under the compact that at one time constituted the political mode of being of the United States of Mexico.

"III. That the constitutive act and the federal constitution, sanctioned on the 31st of January and the 4th of October, 1824, form the only political constitution of the Republic."

Reynolds, page 281.

As this act of constitutional reforms contains no provision for the power on the part of the Federal government to dispose of vacant lands within the several States, it is conclusively shown by section 21 that no such power existed. Section 21 is as follows :

"21. The powers of the Union derive all from the constitution, and are limited solely to the exercise of the powers expressly designated in the same, and it shall not be understood that others are granted in the absence of express restriction."

The ownership of the States is recognized in a communication by the Federal government on August 30, 1849, to the governor of the State of Sonora. It is as follows :

"MOST EXCELLENT SIR : The supreme government is informed that on account of the disturbances in Upper California, especially in the gold placers, robbery and murders have increased, and that the hatred of Mexicans, Spaniards, and Chilians has gone so far as to prevent their living there, and that they have been forcibly compelled to re-embark, and further information has been added to this, which indicates that in that country there are no social guarantees.

"This has attracted the attention of His Excellency the President, and he therefore directs me to say to Your Excellency that he expects you to do all that is possible to attract to yourself this population, in the understanding that public lands will be given to the emigrants on credit, and that if that State does not cede them gratuitously, or if the emigrants cannot pay, it will be given them nevertheless, as the

general government obligates itself to indemnify said State in the manner to be determined at the proper time by the General Congress.

"God and Liberty.

"Mexico, August 30th, 1849.

"LACUNZA."

Reynolds, p. 294.

### III.

Some objection was made to our proofs of the boundaries of the grant, upon the ground that the distances from the center monuments to the exterior ones appear to be greater than those mentioned in the original grant. To this we reply :

First. That the monuments are natural landmarks, and courses and distances must yield to their location.

Secondly. The circumstance that a larger area than eight sitios was included within the grant was distinctly called to the attention of the treasurer general, but, acting under the powers conferred by article 25, he nevertheless made the grant. Under said provisions he was permitted to make grants of larger area than four sitios to each grantee. His attention was directed to the fact that the boundaries of this grant included more than eight sitios. If the distances mentioned in the original grant should be taken as correct, the area would be just eight sitios, and the circumstance that the area was more than eight sitios could only result from the fact that the distances from the center to the exterior were greater than those mentioned in the rude survey. The question is thus narrowed to the proposition whether the treas-

urer general had the power to grant more than four sitios to each grantee. The exercise of his discretion in this behalf cannot be inquired into.

Thirdly. The whole point in regard to the survey as proved by us is based upon the language used by this Court in the case of *Ainsa vs. The United States*. The Court in that case proceeded upon the assumption that the English version of the treaty was a correct translation of the Spanish. The word "located" is not a correct translation of the word "inscrita." It scarcely needs a dictionary to show that the meaning of the word "inscrita" is "in writing." Of course, both versions of the treaty are original; but this Court in the case of *Arredondo vs. The United States*, in considering the treaty with Spain which effected the Florida purchase, declared that in interpreting that portion of the treaty which related to Spanish grants the Spanish language should prevail with the English in interpreting the treaty.

This Court in the decision in the *Nogales* case did not intimate or suggest that the grant was invalid, but merely said that the jurisdiction of the court of private land claims did not extend to unlocated grants. The sacred obligation of the United States would require the recognition of all grants, located or unlocated, which were valid under the laws of usages and customs of Mexico. There are many congressional grants made by the United States which were unlocated when made, and their validity has never been questioned. So, also, a fair half of all the Mexican grants made within the area of California were unlocated, being grants of limited quantity to be laid off within areas embracing more lands than the quantity granted. Such grants



have been sustained by this Court, and such grants, like the Nogales grant, within the territory comprised within the Gadsden treaty, would likewise have been sustained by this Court were it not for the fact that the Court deemed the court of private land claims to be restricted to such grants as were located.

Now, let us assume, which is indeed the fact, that grants of limited quantity of land to be laid off within larger areas were perfectly valid under the laws of Mexico, would it not be the duty of the United States, regardless of treaty stipulations, to protect such grants under the law of nations? It might well be that Congress in creating the court of private land claims might restrict its jurisdiction; but the sacred obligation on the part of the Government would still remain.

When the attention of this Court is called to the erroneous translation of the word "inscrita," we respectfully submit that it will not hesitate to uphold a grant valid under the laws of Mexico and coming within the description of those provided for in the Gadsden treaty.

The act of Congress under which this proceeding was had provides that if the grant be confirmed a survey of the same shall be made by the United States. If, therefore, there be any doubt as to the boundaries of the grant, provision is made for the true determination of the boundaries by the act of Congress under consideration.

EVANS & MEREDITH,  
*Attorneys for Appellant.*

*J. H. Meredith.*

*Byron Waters for Appellant*  
*Filed Mar 16, 1898*

IN FILE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1897.

No. 30.

ROBERT FERRIN,

Appellant,

—  
UNITED STATES vs. —  
Respondent.

—  
APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

—  
Brief of Byron Waters for Appellant.

IN THE  
**SUPREME COURT**  
OF THE  
UNITED STATES.

---

OCTOBER TERM, 1897.

ROBERT PERRIN,

*Appellant,*

vs.

UNITED STATES ET AL.,

*Respondents.*

No. 30.

---

**Appeal from the Court of Private Land  
Claims.**

---

**REPLY BRIEF FOR APPELLANT ROBERT  
PERRIN.**

The record of this action discloses an appeal  
taken by appellant, Robert Perrin, from a decree

of the Court of Private Land Claims of the United States, by which decree the said Court denied confirmation of that certain Mexican grant of a tract of land situated in the Territory of Arizona known as Babocómari.

The title under which appellant asserts his claim, consists of an auction sale of the premises made by the authorities of the State of Sonora under sanction of the Mexican nation, initiated March 12, 1827, and consummated by the payment of the price of such lands on the 24th day of December, 1828, and by the issuance of title thereto on the 25th day of December, 1832. Such sale was made to the grantors of appellant by virtue of the Mexican law of colonization of August 18, 1824, under which the State of Sonora (State of the West) adopted its scheme of sales of vacant lands by its law of May 20, 1825.

This sale is evidenced by the *testimonio* or copio of the expediente of the grant, wherein is shown by undisputable evidence that the original expediente or matrix of the grant is of record in the proper office of the Mexican nation, and of the

State of Sonora. (See transcript of record, pp. 62 to 80.)

That this grant is genuine is affirmatively proven not only by the production of this record of title, but the Special Agent of the Government, Mr. Flipper, testifies as to the original matrix of the grant being *in writing and duly recorded in the archives of Mexico*. (See transcript of record, p. 49.)

The same Special Agent, in conjunction with Special Agent William M. Tipton, in their joint official report on the condition of the archives or records of the titles to land grants in Arizona, make mention of this grant as follows:

55. SAN IGNACIO DEL BABOCOMARI. (Arizona.)

The original *Expediente* is in the archives. The proceedings begin, March 12, 1827, with petition of Ignacio Elias and Eulalia Elias, together with Rafael Elias, Captain Ignacio Elias and Nepomuceno Felix to the Treasurer General for the land between San Pedro and Tres Alamos. This is a joint petition for the tracts for which titles were issued under the names of San Rafael del Yalle,

San Juan de las Boquillas y Nogales and San Ignacio del Babocómari. The original petition is a part of this *Expediente*, and copies of it are attached to the other two.

The proceedings of survey, appraisement, publications, report of Attorney-General and offers of sale are regular. Payment was made January 8, 1829.

An endorsement by Treasurer-General Mendoza states that final title was issued December 25, 1832.

In the book of *Toma de Razon* for 1833, on page 2 of leaf 11, is an entry of this title, which states that it was not delivered till May 8, 1833.

This delay in the delivery of titles is explained by certificate No. 672, copied herein in case No. 54, and certificate copied in case No. 65.

Official Report on Condition of the Archives of Titles in Arizona, by Will M. Tipton and Henry O. Flipper.

Report of Special Agents Flipper & Tipton, p. 36:

The Solicitor-General, in his brief on behalf of the United States, claims that "This grant is void for the following reasons:

1. "Because the title was not lawfully and regularly derived from the Government of Spain or Mexico, or from any of the States of the Republic of Mexico having lawful authority to make grants of land. See brief in *United States v. Coe*, No. 8, and *United States v. Maish et al.*, No. 297.
2. "Because it has not been approved, ratified or confirmed by any official body of the Mexican Republic having authority to bind the nation in that behalf. (See brief in *Ainsa v. United States*, No. 27.)
3. "Because it has been declared invalid by the supreme treaty-making power of the Mexican Republic. (See Santa Ana's decrees, Nov. 25, 1853—Reynolds, 324, et seq. See briefs in *United States v. Coe*, No. 8, and *United States v. Maish et al.*, No. 297.)
4. "Because it had not been located at the date of the treaty of 1853, and consequently falls within the principle announced by this Court in *Ainsa v. United States*, 161 U. S., 208.
5. "Because of uncertainty in the description of the land attempted to be granted."

See Government's Brief, filed Oct 11, 1897, p. 25.

On behalf of appellant it is confidently asserted that none of these propositions can be successfully maintained; but, on the contrary, "according to the law of nations, the stipulations of the treaty concluded between the United States and the Republic of Mexico, at the City of Guadalupe-Hidalgo, on the second day of February, in the year of our Lord eighteen hundred and forty-eight, and the treaty concluded between the same powers at the City of Mexico on the thirtieth day of December, in the year of our Lord eighteen hundred and fifty-three, and the laws and ordinances of the Government from which it is alleged to have been derived" (Act of Congress, 1891, creating Court of Land Claims) this grant is valid and appellant is entitled to confirmation of his title to the land embraced therein.

Counsel for the Government, in their brief herein, as authority for the first three propositions for which they contend, cite their briefs in other cases pending in this Court, but do not furnish us with copies of the same; hence, owing to the shortness of the time between the service of the



Government's brief and the date of the hearing of this cause, it is impossible to procure all of the briefs in the cases referred to; and as to the propositions so covered, the reply of appellant will consist of such affirmative authority as can be collated in support of appellant's position, and no attempt at an analytical refutation of the various points in detail set forth in those briefs will be made.

As to the fourth and fifth propositions urged by counsel for the Government, appellant will attempt a reply in detail.

#### **FIRST.**

THE GRANT IN THIS CASE WAS MADE BY LAWFUL AUTHORITY DERIVED FROM THE FEDERAL LAW OF THE REPUBLIC OF MEXICO, AND FROM STATE AUTHORITY.

The Federal law authorizing this sale to be made by the State consists of a decree of August 18, 1824, respecting colonization.

See copy of this law copied in full in brief of Mr. Merridith for appellant herein, pages 7 to 9.

In pursuance of this law, the Constituent Congress of the State of the West issued its decree No. 30, of the 20th of May, 1825, which shows a complete scheme for the sale of vacant State lands. For copy, see in same brief, pages 9 to 13.

---

Comparing the record of this grant or sale of the tract San Ignacio del Babocómari with these laws, it appears that there has been a substantial compliance with all the requirements of such laws. If we assume that Federal authority was necessary to enable the State of Sonora to dispose of vacant lands, Section 3 of the law of August 18, 1824, clearly delegates to the State "the framing of laws and regulations of colonization as soon as possible."

The federal colonization law above quoted does not assume that the vacant lands within the *States* belonged to the nation, but by that law it was only assumed that the nation owned the vacant lands in the *Territories*, and hence in Section 16 of the same decree it was provided " \* \* \*

that the Government will proceed to the colonization of the *Territories of the Republic.*"

The limitations imposed upon the States by this law were such only as related to the matters, which, under the Federal Constitution, were of national cognizance, such as the rights of foreign colonists, the protection of the national frontier and sea coast, and the defense of the nation, and in all respects not so limited, the power of the State authorities was untrammelled, and especially was this right of sale to the citizen unlimited.

The constitutive Act of 1824 in no way asserts ownership of the nation of the vacant lands in the States (White's Recopilacion, Vol. 1, p. 374); neither does the General Constitution of 1824 (White's Recopilacion, Vol. 1, p. 387).

Contemporaneously with this failure by the General Government to claim ownership of the vacant lands in the States, we find the States claiming such lands within their respective boundaries by the express language of their respective constitutions.

Con. Texas and Coahuila, Art. 10.

Con. State of Mexico, Art. 10.

Con. Nuevo Leon, Arts. 2, 3, 4.

Con. Puebla, Art. 14.

Con. San Luis Potosi, Arts. 2, 3.

Con. Chihuahua, Art. 36, Secs. 2-7.

Con. Sonora.

All these constitutions were approved by the General Government.

By the Act of the General Congress of Mexico, of date August 4, 1824, recited in this grant, State ownership of public lands was unequivocally admitted. That was a law classifying and defining the revenues and property of the Federation and of the respective States.

While these Federal and State constitutions and laws recognized the ownership of the vacant lands by the States, and both the Federal and State governments were acquiescing in their validity, the Federal Government, on November 21, 1828, desiring to dispose of its lands and populate them, promulgated its "general rules and

regulations for the colonization of the *territories* of the Republic," in express conformity with Art. 11 of the law of August 18, 1824, thus alone doing for the *Territories* what it and the *States* had done to populate the vacant lands in the States.

Later, on April 6, 1830, the General Congress of the Nation again expressly admitted State ownership of the vacant lands, and in the decree of that date, declared as follows:

"Art. 3. The Government shall appoint one or more Commissioners, whose duty it shall be to visit the colonies of the frontier States; to contract with the Legislatures of said States for the purchase by the Nation of lands suitable for the establishment of new colonies of Mexicans and foreigners; to enter into such arrangements as they may deem proper for the security of the republic with the colonies already established; to watch over the exact compliance of the contracts on the entrance of new colonists, and to investigate how far the contracts already made have been complied with.

"Art. 4. The Executive is empowered to take possession of such lands as may be suitable for fortifications and arsenals, and for the new colonies, *indemnifying the State in which such lands are situated by a deduction*

*from the debt due by such State to the Federation."*

Rockwell, p. 621.

Reynolds, p. 148.

These laws of Mexico, prior in date to this grant constitute the antecedent authority, vouchsafing its validity. Until the adoption of the Central System, in October, 1835, the ownership of the full dominion of the vacant lands by the respective States was recognized by the Federal Government, exercised by the States, and questioned by no power, State or Federal.

This title vested in plaintiff's grantors prior to October, 1835.

This era in Mexican history, extending from 1835 to 1846, is known as the time of the Central Government.

On August 22, 1846, the Constitution of 1824 was provisionally re-established in pursuance of the plan of the Citadel of August 4, 1846; and on May 18, 1847, the Act of Constitutional Reforms was enacted, which placed the Mexican Republic fully under the Constitution and the Constitutive Act of 1824, as modified by this Act of Reforms.

In the preamble of this Act of Reforms we find this characterization of the assumed powers of the Central Government:

I. That the States that compose the Mexican Union have recovered the independence and sovereignty that were reserved to them in the Constitution for their interior administration.

II. That said States continue united under the compact that at one time constituted the political mode of being of the United States of Mexico.

III. That the Constitutive Act and the Federal Constitution, sanctioned on the 31st of January and the 4th of October, 1824, form the only political Constitution of the Republic.

Reynolds, p. 281.

In this Act of Reforms we find no assertion of ownership of the public or vacant lands within the States, and, by its terms, the only restriction placed upon the States as to any matter pertaining to such lands is that exclusive power is given to the General Congress to give *bases for colonization*.

Sec. 11, Act of Reforms.

Reynolds, p. 284.

By Sec. 21 the idea of Federal ownership, or claim of ownership of public lands, is negated:

21. The powers of the Union derive all from the Constitution, and are limited solely to the exercise of the powers expressly designated in the same, and it shall not be understood that others are granted in the absence of express restriction. *Id.*, p. 285.

All of the State constitutions were revived by the Act of Reforms:

The States shall continue to observe their own constitutions, and shall renew their functionaries in accordance therewith.

Act of Reforms, Sec. 30.  
Reynolds, p. 287.

State ownership of vacant lands is expressly recognized by the Federal Government by the communication made on the 30th of August, 1849, by the Government to the Governor of the State of Sonora:

*Most Excellent Sir:* The Supreme Government is informed that, on account of the disturbances in Upper California, especially in the gold placers, robbery and murders have increased, and that the hatred of Mexicans, Spaniards and Chilians has gone so far as to



prevent their living there, and that they have been forcibly compelled to re-embark, and further information has been added to this which indicates that in that country there are no social guarantees.

This has attracted the attention of his Excellency, the President, and he therefore directs me to say to your Excellency that he expects you to do all that is possible to attract to yourself this population, in the understanding that public lands will be given to the emigrants on credit, and that, if that State does not cede them gratuitously or if the emigrants cannot pay, it will be given them, nevertheless, as the General Government obligates itself to indemnify said State in the manner to be determined at the proper time by the General Congress.

God and Liberty. Mexico, August 30th, 1849.

LACUNZA.

Reynolds, p. 294.

Again, in 1851, the Federal Congress, having the judicial power to declare unconstitutional a State law for violation of the Federal Constitution, in declaring a certain colonization law of Sonora invalid, uses this language.

The decree of the Legislature of the State of Sonora of May 6th, 1850, is unconstitu-

tional \* \* \* because it is opposed to Article 11 of the Act of Reforms (Comp. Laws, Mexico, Vol. V, page 275, No. 2982, May 18th, 1847), which says:

*"It is the exclusive right of the General Congress to establish bases for colonization, and to enact laws under which the powers of the Union are to perform their constitutional functions:"* and to Article 2 of the general law promulgated April 25th, 1835, which says:

"Art 2. In the exercise of the power reserved to the General Congress in Article 7 of said law of August 18th, 1824, the frontier and littoral States are prohibited from alienating their vacant lands for colonization, until the regulations to be observed in carrying it out are established."

Reynolds, 296-298.

This adjudication of unconstitutionality of the State law is not based on the ground that the State did not own or could not dispose of the public lands within its limits, but is founded on the doctrine that as to certain particulars therein stated as to colonization by foreigners, the Federal law had been violated.

Here it is proper to state that in the late work of Mr. Reynolds, "Spanish and Mexican Land Laws," he prefaces this law with the statement that it "annuls decree of the State of Sonora, declaring public lands belong to Sonora." This declaration is likely to mislead, as it might induce one to think that the law was declared unconstitutional for the reason that the State assumed therein to be such owner; but, as already shown, the declaration of unconstitutionality was based on other grounds. In this connection attention is called to the learned opinion of Hon. L. Mendez, President of the Mexican Academy of Legislation and Jurisprudence, in which he makes the point that restrictions against sales, without Federal consent, were not in existence at the date of this grant, which was perfected in 1833, such restrictions not having been imposed until 1835; and he cites this act of the Federal Congress of 1851 as recognizing State ownership of the vacant lands.

The position assumed that each of the Mexican States had dominion of its vacant or public lands is also strengthened by the fact that the Federal

Government not only provided for grants of the public lands of the Territories by the law of November 21, 1828, entitled "Regulations for the Colonization of the Territories," thus recognizing, as is plainly done in the Colonization Law of 1824, a different status and ownership of State and Territorial lands, but the Federal Government also preserved the same discriminating intent to exclude any idea of asserting claim to the vacant lands in the States when it came to provide Government agencies for the administration of Federal property, real and personal, situated in the States. See Law for Colonization of Territories, of 1828, Reynolds, p. 141; also, order of May 10, 1829, relating to the administration of Federal property; this law specifically refers to the "property (bienes) lands (fincas) of the temporalities \* \* \* in which consist the temporalities of the Jesuits and Monastics, of the rural and urban lands belonging to the Inquisition," and therein no reference is made to the *baldios* or public lands, such as are described in Sec. 1 of the Act for the granting of lands in the Territories cited above.

Reynolds, p. 144.

The same is true of the decree of September 2, 1829, and of the regulations under the same, of like date, providing that the nation alone should benefit by the confiscations of the temporalities.

Reynolds, pp. 146, 147.

The law of January 26, 1831, creating the General Department of Revenue (Reynolds, p. 151), and that of May 21, 1831 (Reynolds, pp. 153-161), creating Commissariats and Commissaries and regulations thereunder, expressly limit the Federal agencies to the specific properties as above stated, and hence cannot by construction be held to provide for the sale or administration of the vacant or public lands.

The sum of these considerations is that:

At the time of the initiation, and up to and beyond the date of the final perfecting of the title here in question, the Mexican Government recognized the title of the State of Sonora and its predecessor, the State of the West, to the vacant or public lands within its limits, and its correlative, absolute power of alienation, subject only to the

restrictions of the Act of August 18, 1824, with none of which did this sale conflict; and upon this recognition the State asserted title, passed its law providing for this class of sales, and, upon both such Federal recognition of State title and State authorization and offer of sale, the grantors of claimants made their application to purchase and did purchase the lands claimed, and paid the lawful purchase price therefor in April, 1828, seventy years ago.

The grantees were persons of distinction, actively engaged in the military service of their country, and already intimately concerned in the attempt to populate the section of country embracing the grant and the other contiguous tracts, San Pedro and Babocomari, and to rescue it from the savage Apaches.

Upon making this purchase, the grantees established their herds of horses and cattle upon the granted premises, and from that time to the date of the Gadsden purchase they maintained possession of the same at the cost of continual loss of property and risk of life—a parallel to which is

not furnished by the history of any other part of the territory now comprised within the United States.

All this is matter of history, and though it may be vague as to specific details, yet the sources of information are so many and the facts so notorious that there can be no doubt as to its absolute truth.

The withdrawal of the soldiers of the Spanish in 1821, followed by the exit of the priests in 1827 or 1828, left the country in the unrestrained occupancy of the savage Apache until his ravages were modified, but not for the better, by the influx of the early American adventurer, trapper and gold hunter, who not only brought with them a hatred of the Mexican, but from whose example the Indian learned to shoot a rifle and imbibed a new antipathy for Mexicans. The war between Mexico and the United States came in 1846, resulting in the cession to the latter of the territory north of the Gila River, by the treaty of 1848. During this period Mexico could do nothing toward furnishing protection against the Indians, and soon after

this time complications arose as to the international boundary line, which dispute lasted until December, 1853, resulting in this Government acquiring the strip of country from the Gila to Nogales. It is plain that during all of this time any failure of the grantees to occupy continuously their granted premises was excusable under the plain provisions of the grant, which are that

“they shall not permit the same to be unoccupied for any time whatever, with the understanding that if it shall be totally abandoned for a term of three years consecutively, and there should be any other person who may denounce the same, in this case, the abandonment being clearly shown, it shall be granted anew in favor of the highest bidder, excepting, as is just, *such cases as where the abandonment has been caused by the notorious invasions of the savages*, and in such cases, only during the continuance of such invasions.”

The evidence fails to show that this condition was ever availed in any way by any one seeking to denounce for failure to occupy; and it is certain from the notorious continuance of the invasions of the savages that such denouncement



could not have been made at any time from the date of the grant to the time of the Gadsden Treaty.

Copies of the papers constituting this title, and a similar grant, the "Boquillas," owned by Mrs. Phebe A. Hearst, have been submitted by claimants to eminent counsel residing in the City of Mexico, Hon. Luis Mendez, President of the Mexican Academy of Legislation and Jurisprudence, and his opinion sustaining the validity of this title is intrinsically convincing and fully comprehensive of the laws involved in determining the question. This opinion is also endorsed and approved by Hon. Ygnacio Sepúlveda, now and for ten years past practicing his profession at the City of Mexico, formerly Judge of the Superior Court of the County of Los Angeles, Cal., who is proficient in his knowledge of Mexican law. The following is the opinion:

#### OPINION.

On the 8th day of May, 1833, the Treasurer-General of the State of Sonora issued title to four sitios of land (four Mexican square

leagues) of the place named "*San Juan de las Boquillas y Nogales*" in favor of Captain Ygnacio Elias Gonzales and Nepomuceno Felix. These four sitios were a part of a denouncement filed in Arizpe on the 12th of March, 1827, asking its adjudication after appraisement and payment of price, as the lands were vacant or public.

In the title deed, of which a copy has been given me, and I presume it is a true copy, are inserted all the proceedings had according to the law in force in the State of Sonora for the survey, appraisements, public auction, calling for bidders, and the sale of the four sitios. It also appears by said title deed that the sum of \$240, in which said sitios were appraised and sold in the year 1828, having been paid to the General Treasury of the State, the Governor of the State ordered, on the 29th of April, 1833, that title should issue, it not having been previously made, for reasons independent of the will of the grantees.

The question is whether this title is legal. The validity of a title to property may refer either to its form or extrinsic formalities, or to its substance or intrinsic formalities. As to the form, there is no doubt that all the formalities were complied with required by the common law in force in all the Republic in the year 1833 for the acquisition of real estate; and it also appears that compli-

ance was had with the special legislation of the State of Sonora with respect to the alienation of vacant or public lands belonging to the State. But the question arises as to whether the lands sold in such a way belonged to the State; and the question refers to the substance of title or its intrinsic formalities, because, if in fact the vacant lands belonged in 1833 to the State, then the sales in question made by the State of Sonora were valid, unless in conflict with some of the general laws of the Republic. On the other hand, if said public lands did not belong to the State, but belonged to the Nation, then any sales made by the State and not confirmed by the Federal Government were essentially null, because a sale is null if made by one who is not the owner. There being nothing said about public or vacant lands either in Constitutive Act of the Mexican Federation of the 31st of January, 1824, or in the Constitution of the 4th of October of the same year, which was its complement, the matter relating to the ownership of said lands was controlled in the year 1833 by the law of the 18th of August, 1824, enacted by the General Constitutive Congress of the Mexican States, during the period that elapsed between the former Constitutive Act of the 31st of January previous and the Constitution of the Republic enacted by same Constitutive Congress on the

4th of October following. Now, the law of the 18th of August, 1824, whose object was to give regulations about colonization, recognized not only the ownership of public lands in the States, but their right to colonize them, subjecting them only to certain regulations as to colonization. Hence Art. 3rd of said law provided that "that the Congresses of the different States should establish, within the shortest time, the laws or regulations of colonization within their respective territories, in accord with the Constitutive Act, General Constitution and the rules established in the same law." This clearly recognized in the States the ownership of the public lands: first, because, according to Art. 2nd of said law, its object was the colonization of said lands; second, because it could not be deduced that the States would be granted the power to legislate on the colonization of lands belonging to the whole Nation.

The interpretation given by the States to the laws, that the public lands belonged to them, is confirmed by several subsequent decrees of the Federal Congress; and we may cite amongst others the law of the 6th of April, 1830, and that of the 25th of April, 1835; but we may especially refer to the law of the Federal Congress, enacted on the 14th of May, 1851, because it particularly applies to the State of Sonora.

The reason why this law was enacted is the following: On the 6th of May, 1850, the Legislature of the State of Sonora passed a decree declaring, subject to colonization, all the vacant and public lands lying on its frontiers not belonging to any individual, corporation or pueblo.

The Federal Congress, by the law of the 14th of May, 1851, declared unconstitutional the above enactment of the State of Sonora, for two reasons: first, because it conflicted with Art. 11th of the amendments to the Constitution of 1824, adopted on the 18th of May, 1847, which provided that it was of the exclusive power of the Federal Congress to enact bases for colonization, and the laws by which the Federal power was to exercise its constitutional functions; and, second, because it was in conflict with Art. 2nd of the general law enacted on the 25th of April, 1835, which provides: "Art. 2nd. By virtue of the power reserved by the General Congress in Art. 7th of the said law of the 18th of August, 1824, the States bordering on the frontier or the coast are prohibited from alienating *their vacant lands* to colonize them until the regulations to be observed for this purpose are established." It is thus seen that the Federal Congress, in 1851, considered still in force the law of the 25th of April, 1835, that recognized the ownership of the States of their vacant lands, but pro-

hibited the States on the frontier and on the coast from alienating to colonize them until the regulations for that purpose were established. Art. 2nd, referred to by the law of the 25th of April, 1835, was enacted by virtue of the power reserved to the General Congress in Art. 7th of the law of the 18th of August, 1824, so as to limit the entry of foreigners to colonize, when imperative circumstances might require it in regard to individuals of any nation.

From the above it results: 1st, that in the year 1833 the State of Sonora could legally sell to Captain Don Ignacio Elias Gonzales and Nepomuceno Felix the four sitios for the raising of horses and cattle in the *San Juan de las Boquillas y Nogales*, within the jurisdiction of the Presidio of Santa Cruz, because the Federal Government itself recognized the ownership of the State of the vacant lands and the right to alienate them; 2nd, because the *limitations* established in the decree of the 18th of August, 1824, referred only to *foreigners and not to Mexicans*, to which nationality the grantees in this case belonged; and because the decree of the 25th of April, 1835, suspending the power of the frontier States to alienate had *not then been issued*.

I therefore deem the title above stated to be perfectly legal, and *did not require for its validity the confirmation of the Mexican Fed-*

*eral Government. I entertain the same opinion with regard to the title of the Barbacomori Ranch acquired about the same time, and with regard to any other vacant lands whose titles are on the same footing with this case.*

LUIS MENDEZ,  
Consulting Attorney and President of  
Mexican Academy of Legislation and  
Jurisprudence.

After a thorough examination of the law bearing on the above case, I concur fully in the opinion rendered by Hon. Luis Mendez.

Y. SEPULVEDA,  
Atty. at Law.

Mexico, Nov. 19, 1895.

## SECOND POINT.

The answer hereinbefore given to the first proposition made by the Government, also answers the second proposition, in that no approval, ratification or confirmation of this grant was required at the hands of the Mexican Republic, because of such prior authority. It is only an authorized act which requires subsequent ratification.

### THIRD POINT.

The Government next contends that this grant was void because it has been declared invalid by the supreme treaty-making power of the Mexican Republic. Reference is made under this head to the decree of Santa Ana, of November 25th, 1853.

The decree of Santa Ana is a nullity:

1. Because at that time the Government of Mexico was that of a constitutional Republic, under whose organic law the powers of the Government were divided into Executive, Legislative and Judicial. Santa Ana was its President, and as such had only the power to execute the laws, and had no power to make a decree confiscating private property or annulling titles.

2. Because the Republic of Mexico was then being treated with by its Government relative to the acquisition of the territory embraced within the Gadsden purchase, and within thirty-five days after the date of the pretended decree of Santa Ana, this Government consummated by treaty, its negotiations acquiring such territory, and by the terms of the treaty recognized the constitutional



entity of the Republic of Mexico. This Government is bound to recognize the limitations of Santa Ana's power under the Mexican constitution.

Governing this question of the power of Santa Ana, either to make the decree annulling the grants, or to make a treaty, the following provisions of the Constitution of Mexico then in force are cited.

"Constitution of 1824 of the Mexican Republic.

Article 6.

"The Supreme power of the Federation as to its exercise, is divided into the Legislative, Executive and Judicial powers.

\* \* \* \* \*

"ARTICLE 50.

"The exclusive powers possessed by the General Congress are the following, viz:  
\* \* \* (Section 13), to approve treaties of peace, alliance, friendship, confederation, armed neutrality, and all others which the President of the United States may enter into with foreign powers.

“ARTICLE 110.

“The attributes of the President are the following: \* \* \* (Section 14) To direct diplomatic negotiations, and make treaties of peace, friendship, alliance, truce, confederation, armed neutrality, commerce and all other kinds, but in order to give or withhold ratification of the same, the *approbation of the General Congress is necessary.*

“ARTICLE 112.

“The restrictions of the President’s powers are the following: \* \* \* (Section 3) The President cannot occupy the property of any individual or corporation, nor disturb them in their possession or use of the same; and, if in any case it should be necessary for some object of acknowledged utility to take the property of an individual or a corporation, it cannot be done without previous approbation of the *Senate*, and in the recess the Council of the Government, always indemnifying the party the value fixed by appraisers chosen by himself and the Government.

“ARTICLE 147.

“The confiscation of goods is forever abolished.

“ARTICLE 148.

“All judgments by commission and retro-active laws are forever prohibited.

“ARTICLE 171.

“Those articles of this Constitution and of the constitutive act which establish the liberty and independence of the Mexican Nation, its religion, form of Government, liberty of the press and the division of the Supreme powers of the Union and of the States can never be changed.

“Const. of Mexico, 1824-1847. White's Recopilacion of the Laws of Spain and the Indies and of Mexico and Texas.

“The particular department of the Government which shall be able to enter into a binding treaty, and the particular steps necessary to be taken in order to render it obligatory, must depend entirely upon the internal constitution or fundamental law of each State; and all other Nations are bound to take notice of this Constitution in that respect, and of the powers which it confers upon the Government.\* \* \* The particular Constitution of each State, or its fundamental law, governs in this matter, and determines to which of the powers, whose whole forms the Government,

belongs the right of making treaties in the name of the State."

Pomeroy's International Law, pp. 326, 327.

3. Because the treaty by its express terms stated what grants could be recognized as obligatory, and by necessary implication negatives the validity of the decree of Santa Ana (See Treaty, Art. VI., 10 U. S. Stats. at L., 1035).

4. Because Santa Ana, even if he did on Nov. 25, 1853, assume to be a dictator, and assumed as such to confiscate the property of the citizen or to annul titles, his decree never received vitality, since Santa Ana's assumption of dictatorial power was never carried into execution by him, but the force of such decree remained futile owing to the fact that his assumption of dictatorial power was repudiated and overthrown by the Mexican sovereignty.

#### FOURTH.

It is next claimed on behalf of the Government that this grant is void because it had not been *located* at the date of the Treaty of 1853, and con-

sequently falls within the principle announced by this Court in *Ainsa v. U. S.*, 161 U. S., 208.

NOTWITHSTANDING WHAT HAS BEEN SAID BY THIS COURT IN THE CASE LAST CITED, WE RESPECTFULLY INSIST THAT THE ELEMENT OF "LOCATION" IS NOT ONE REQUIRED BY THE TREATY OF 1853, NOR BY THE ACT OF CONGRESS OF 1891 PROVIDING FOR THE CONFIRMATION OF THESE GRANTS. True, the English copy of the treaty as published in the tenth volume of the Statutes at Large, and the opinion of this Court in the case of *Ainsa v. U. S.*, above cited, would indicate that no grants can be regarded as obligatory, unless the same shall have been "located" and duly recorded in the archives of Mexico; but the word "located," as it occurs in the English copy of the treaty, Section VI, is a mistranslation, and not warranted by the Spanish text of the treaty, as can be shown to a demonstration.

The expressions used by this Court in the *Ainsa* case controlling this point are as follows:

"Article VI of the Gadsen Treaty (Dec. 30, 1853), is as follows: 'No grants of land within the territory ceded by the first article of this treaty, bearing date subsequent to the day—twenty-fifth of September—when the minister and subscriber to this treaty on the part of the United States proposed to the Government of Mexico to terminate the question of boundary will be considered valid or be recognized by the United States, or will any grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the archives of Mexico' (p. 221). \* \* \* 'By the treaty no grant could be considered obligatory which had not theretofore been located' (p. 223). \* \* \*

"Assuming that this was a valid grant made by the proper officers, and duly recorded, we concur with the Court below that it was a grant of a specific quantity of land and not of the entire eighteen leagues contained within the exterior boundaries, and, not having been located at the date of the treaty, could not be confirmed" (p. 224). \* \*

"In any view no reason is perceived for disregarding the construction thus put upon the titulo, and as the land purchased was not located at the date of the cession, the United States were not bound by the treaty to recog-

nize the claim as of right, nor could the Court of Private Land Claims confirm it" (p. 234).

Shortly after the publication of the decision of the Supreme Court of the United States in the Ainsa case, counsel for these plaintiffs sought the opinion upon the questions involved, of eminent authority upon Mexican law, and herewith presents the joint opinion of Hon. Y. Sepulveda, Secretary of Legation at Mexico, and of Hon. Luis Mendez, President of the Mexican Academy of Legislation and Jurisprudence, as follows:

#### OPINION.

IN THE MATTER OF THE TITLE TO }  
 FOUR SITIOS IN SAN JUAN DE }  
 LAS BOUQUILLAS Y NOGALES. }

On the 18th of November, 1895, we gave an opinion as to the legality of this title issued on the 8th of May, 1833, by General Treasurer of the State of Sonora in favor of Captain Ygnacio Elias Gonzalez and Nepomuceno de Felix. The main question upon which we rendered an opinion then was the legality of the title that was issued by the State authorities of Sonora, and not by the Federal Government.

We were of opinion that at the time said title was issued, the title to the vacant public lands was vested in the States, and that these could legislate and dispose of them according to their own local laws, and hence that the title issued was legal and valid.

Now it has again been submitted to us in view of a decision rendered by the Supreme Court of the United States on the 2d of March, 1896 (161 U. S., 208), in the case of Santiago Ainsa, Administrator, with the will annexed, of Frank Ely, deceased, et al., appellants, vs. The United States, Number 429, Appeal from the Court of Private Land Claims. The question propounded is whether or no judicial possession is required to be given after issuance of title to perfect and render valid the rights granted to Ygnacio Elias Gonzalez and Nepomuceno Felix.

We have carefully read the decision of the Supreme Court of the United States above referred to. We would not criticise the opinion of a tribunal which justly deserves the respect which the ability of its members exacts, though we may differ in the judicial conclusions reached. The main point is, that according to Article 6 of the Gadsden Treaty of December 30, 1853, by which the Mexican Government, to settle the question of boundary between the United States and Mexico, ceded the territory within which lie the seven and



a half sitios affected by the decision of the Supreme Court, the United States are not obliged to recognize grants made previous to the 25th of September, 1853, WHICH HAVE NOT BEEN LOCATED AND DULY RECORDED IN THE ARCHIVES OF MEXICO. Taking the English text of the treaty, it is deduced that all grants of land which had not been LOCATED, which, in the opinion of the Supreme Court, consists in taking judicial possession, citing adjoining owners and designating the boundaries, are not grants which, according to the treaty, ought to be considered valid or be recognized, although it be established that the grant was given by competent authority and was duly inscribed and recorded in the archives of Mexico. But, referring to the comparison of the English and Spanish texts of the treaty (10 Stat., 1031, 1035), we find a difference between them. The Spanish text says that "no se consideraran como obligatorias ningunas concesiones hechas con anterioridad que no hayan sido INSCRITAS y debidamente registradas en los archivos de México." In the English text the word LOCATED appears as the corresponding word INSCRITAS, in Spanish. These words, however, have an entirely different meaning, and give different ideas. The word LOCATED, from locate, according to Webster, is: "To select or de-

termine the bounds or place of, as to locate a tract of land," and location in its judicial acceptation is: "The marking out of the "boundaries or identifying the place or site "of a piece of land according to the description given in an entry, plan, map and the "like." The Century Dictionary defines TO LOCATE—"To fix the place of; to determine "the situation or limits of; as, TO LOCATE "the site of a building; TO LOCATE a tract "of public land by surveying it and defining "its boundaries; TO LOCATE a land claim; "TO LOCATE (lay out) the line of a rail- "road." The word INSCRITAS, in the Spanish text of the treaty, from INSCRIBIR, signifies, speaking of titles by grant, to enter them in writing in some register or book of registers, and, in the legal Mexican expression, the words, REGISTRO E INSCRIPCION, REGISTRADO, é INSCRITO, are used indifferently one for the other, to signify the same idea, that is TO MAKE a note or make a compendium in a book called "Register Book, Record Book" (Libro de Registro ó de Incripciones) of the contents of a document. Hence these expressions we find used indistinctly in the Mexican Civil Code; for instance, in Title XXIII of the BOOK III of the Civil Code, which treats of the Public Register or Books of Record, where note is to be taken of certain titles or documents mainly

relating to real estate, we read: Art. 3188. "The REGISTRY (record) shall be made in the office where the property mentioned is, according to its situation." Art. 3189. "If the property should be situated in different districts, the registry shall be made in all of them." Art. 3190. "*Ninguna inscripción* puede hacerse si no consta que el que la pretende es actualmente dueño de los bienes, tiene derecho para exigir el REGISTRO ó proceda con poder legal del propietario" (No INSCRIPTION shall be made if it does not appear that the one desiring it to be made is the present owner of the property, having a right to demand its REGISTRY, or acts with a legal power of the owner). Art. 3191. "Solo pueden INSCRIBIRSE los títulos que constan de escrituras públicas, y las sentencias y providencias judiciales certificadas legalmente" (There can only be INSCRIBED the titles that appear in public writings and the judicial sentences and orders legally certified). Art. 3219. "Las INSCRIPCIONES no se extinguen en cuanto á tercero sino por su cancelación, ó por el REGISTRO de la transmisión del dominio ó derecho real INSCRITO á otra persona" (The inscriptions are not extinguished with regard to third persons, unless they be cancelled, or by the registry of the transfer of ownership or right of realty INSCRIBED to

another person). Examples might be multiplied to show that in the language of the Mexican laws now as before, and at all times, the INSCRIPTION of a grant or title to land, as well as that of any other instruments or documents, is nothing more than taking note of it or having it entered in a public REGISTER or Record.

Undoubtedly the decision of the Supreme Court of the United States was based exclusively on the English text, and no notice was at all taken of the difference which we mention as existing between the English and Spanish text. Now, when a treaty is made in two languages, and one expresses a different idea from the other, which text ought to prevail? There are some international writers who are of the opinion that as both texts are considered originals neither has preference, and only a diplomatic convention can settle the matter. This is the opinion of Martens, in his *Compendium of Derecho de Gentes*, Book VI, p. 179. There are others, as Penheyro-Ferreira, Annotator of Martens, who are of the opinion that one text ought to be taken as the original and the other as an authentic translation. According to this opinion, the original text prevails, and the translation ought to be corrected.

In our opinion, if in fact it appears that the negotiations were had in one of the two

languages, and that the first text discussed was written in that language, the opinion of Penheyro-Ferreira is the most rational and most in conformity with the principles governing contracts of private rights. The presumption is that the contract was entered into in the language of the country where it was made, especially so when the subject matter is public instruments, which in most countries, Mexico among them, can only be executed in the official language, which is the national.

The treaty of 1853, having been made in Mexico, was probably negotiated in Spanish, the text in this language having served for its discussion.

Be this as it may, it is nevertheless clear that the main reasoning of the decision of the Supreme Court of the United States, that we are considering, is subject to a serious objection for the causes stated.

The Supreme Court having based its decision on the fact that because of the words of the treaty the United States are not obliged to recognize as owners the grantees of lands which at the date of the treaty had not been *located*, was compelled to enter into the examination of the acts which constitute such location, and the Court, in this respect, seems to incline to the doctrine of judicial possession preceded by survey and marking out of the

boundaries of the property, made by previous citation of the adjoining owners in their presence and the titles exhibited.

The examination of this point requires us to cite the legal rules, which, at the date of the treaty, controlled the contract of sale, because really a sale took place in land grants, except, when the concession was gratuitous or in the nature of a donation. Every concession in which the party acquiring the land paid any price for it, was, without a question a real sale. Although the contract of sale was perfected by the agreement of the seller to transfer the ownership of the thing to the purchaser for a certain price in money that this bound himself to pay, the dominion of the thing sold did not pass to the purchaser until it was delivered. That is to say, there was a difference between the PERFECT contract and the consummated contract. The principle of the Roman law was followed: "NON NUDA CONVENTIONE SED TRADITIONE DOMINIUM ACQUIRI." But the transfer, or delivery, of the thing sold might be a material delivery or a symbolical one. The first consisted in the seller placing the purchaser in fact, or materially, in possession of the thing; the second was effected by the mere delivery of the titles to the property. And on this symbolical delivery there is in the old Spanish codes, which were in force in

1853, a most interesting law, which we will copy. Law VIII, Title 30, Partida 3d (Code of the Siete Partidas), says: "DANDO AL-  
 "GUN OME HERADAMIENTO O OTRA  
 "COSA QUALQUIER APODERANDOLE  
 "DE LAS CARTAS POR QUE LA EL ONO,  
 "O FAZIENDO OTRA DE NUEVO, E  
 "DANDOGELA, GANA LA POSSESSION  
 "MAGUER NON LE APODERE DE LA  
 "COSA DADA CORPORALMENTE" (If any  
 gives a hereditament or any other thing by  
 giving the title papers by which he holds it or  
 making a new one and giving it, he acquires  
 the greatest possession, although he does not  
 give corporal possession). If no corporal, or  
 material, possession was required of the  
 thing sold to transfer dominion, much less  
 was it required, as it is not required at pres-  
 ent, that the delivery should be judicial by  
 the attendance of any authority of the judi-  
 cial order. It might, of course, be stipulated  
 in the contract that the delivery of the thing  
 should be made judicially, be it after the sur-  
 vey proceedings to determine, with the cita-  
 tion of adjoining owners, the true boundaries  
 of the thing, or without such proceedings.

*When such stipulation existed the judicial possession was the effect of the contract, but not a requirement of the law; it was not an essential requisite to transfer the ownership. Even without a stipulation, the proprietor of*

land could then, and can now, ask for a judicial survey, and this is done whenever any controversy, or disputes, arise between adjoining owners. What we mean is that for the transmission of the thing sold, so that the party acquiring it be held as the owner and possessor, it has not been a requirement of law that judicial possession be given, either by the legislation in this country before the treaty of 1853 nor afterwards, nor at any time. This being the case, when the Government transferred the dominion of national or vacant land to an individual or company it was not necessary, before 1853, that the party acquiring should take judicial possession of the land so as to vest in him the ownership. It was sufficient that the title should be issued to him and the title should be registered (recorded) or inscribed in the special registers that were for the purpose kept. It is the same at present. It was not necessary to locate the land before the issuance of title. The petition for the purchase or sale being made and the land not being surveyed or located, if it was for a quantity included within a larger area of national land, or if it was uncertain whether the land asked for was all Government land, or if the measurement asked was its real extent, in short, it being the first requisite of a sale that the thing sold be known, and that it belongs to the one who



sells it, the locating of the land asked was made by expert surveyors, appointed by the judicial or administrative authority, and not only proceeded to locate, but to the determination of its value. After these proceedings, which determined the locality of the land, its extension and value, the advertisement of sales was had, with the double purpose of having bidders present who might offer a better price, and that those who pretended to be private owners of the land might exercise their rights and oppose the sale. If no better price was offered and there was no opposition, the land was adjudged to the petitioner at the price of appraisement, and title was issued to him, and he thereby became the owner of the land. Then the title was registered, as we have said.

Such were the proceedings in the matter, and they are the same to-day, with the only difference that proceedings for the survey of the land have been somewhat perfected.

Some of the laws cited by the Supreme Court of the United States prescribed that the party acquiring the land should be compelled to construct permanent monuments to mark the boundaries, within a certain time, subject to a fine and having boundaries and monuments established at his cost. These provisions, however, indicate: 1st, that the land had already been located and measured,

only that in doing it provisional monuments had been placed; and 2d, that the tradition of the property to the grantee, or party acquiring it, was recognized by the simple delivery of the title and its registry. The omission to erect permanent monuments did not carry the forfeiture of the property, but a fine was only imposed, and the establishing of the permanent monuments by the agents of the authorities at the cost of the party acquiring the land.

If we examine the titles that were then issued it will be clearly seen by themselves conferred a perfect right of possession and property in the land granted or alienated, and that the obligation to establish permanent monuments, if not complied with, did not forfeit nor diminish at all that right of possession and property. In fact the land was located, surveyed and appraised before the issuance of title, and not only this, but before the issuance, publications of public sale of the land thus located, measured and appraised were had.

This was especially done in the matter of the title of the four sitios situated in the Puerto de San Juan de las Boquillas y Nogales in the Presidio de Santa Cruz, which are before us.

The situation, or localization, of the land sold having been determined by the proceed-

ings had previous to the issuance of title, and the price having been paid, the essential elements of a sale exist, which consists in the transmission of the dominion of the thing with the consent of the seller and the purchaser as to the thing sold and the price and the issuance of the title and its registry.

It may be well to observe in the matter of national lands, that the law which required the registry of the title of the grant was in anticipation of what later became a general rule for the transmission of real estate of any kind. At present it is not enough to transmit ownership of real estate that the seller should execute a title deed to the purchaser, but the law requires that this title deed should be inscribed and registered in the Public Register of property. From the moment that the inscription is made the property is irrevocably transferred, and no one but the owner inscribed can be held as the owner of the land. But while the inscription is not made, if the owner sells or mortgages the thing to another person, and this one inscribes, or registers, his title, the first purchaser has to recognize the right of the one who bought and first registered, and can only bring suit against the one who sold it for indemnization. The law, however, to avoid fraudulent transactions, fixes a time after the execution of the deed within which no other conveyance can

be legally registered; but the time fixed having lapsed the negligence of the purchaser will occasion the loss of his right to inscribe his title, if another purchaser registers before.

These are rules of the Mexican law; and we reiterate, as a conclusion, that no law, ancient or modern, required ever, in this Republic of Mexico, judicial possession for the acquisition of real estate, and that the title to the lands that we have under consideration cannot be invalidated according to Mexican law for the want of judicial possession.

LUIS MENDEZ.

Y. SEPULVEDA.

City of Mexico, July, 1897.

To them belongs the credit of first calling attention to the patent and most important contradiction which exists between the English and Spanish copies of the treaty mentioned, in a particular which, under rules of construction of similar treaties, will do away with the element of "location" so held in the Ainsa case as a necessary requisite to confirmation of these grants.

Both the English and Spanish copies of this treaty are originals.

U. S. Statutes at Large, Vol. 10, p. 1031.

The contradiction or mistranslation occurs in article VI of the treaty: Id., p. 1035, as follows:

*From the English*

Or will any grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the archives of Mexico.

*From the Spanish.*

Ni tampoco se respetarán, ni considerarán como obligatorias ningunas concesiones hechas con anterioridad que no hayan sido inscritas y debidamente registradas en los archivos de Mexico.

It is apparent that the word "located" should have been omitted from the English copy, and the word "inscribed" used instead.

Dominguez Diccionario Nacional, inserito, ta. part. pas. irr. de Inscribir.

On the other hand, if the English word "located" expressed the intention of the contracting parties, the corresponding word in the Spanish version would have been "colocado."

Dominguez Diccionario Nacional, "colocado," da. part. pas. de Colocar o colocarse.

Spanish and English Dictionary, Velazquez, "to locate," p. 314; "colocar," p. 162.

Both versions being originals, the question naturally arises, which shall prevail?

Fortunately, the Supreme Court of the United States has decided the identical point, in the case of *U. S. vs. Arredondo*, 6 Peters, p. 740, where, as here, a treaty of cession of territory was to be construed. The Court there said:

“The King of Spain was the grantor, the treaty was his deed, the exception was made by him, and its nature and effect depended on his intention, expressed by his words, in reference to the thing granted, and the thing reserved and excepted in and by the grant. The Spanish version was in his words, and expressed his intention, and, though the American version showed the intention of this Government to be different, we cannot adopt it as the rule by which to decide what was granted, what excepted and what reserved; the rules of law are too clear to be mistaken and too imperative to be disregarded by this Court. We must be governed by the clearly expressed and manifest intention of the grantor, and not the grantee, in private *a fortiori*, in public grants.”

Special attention is also invited to that part of the opinion of Messrs. Sepulveda and Mendez in

which they treat of the doctrine of juridical possession under the laws of Mexico. They make it plain that in cases like this, of a sale for a price paid, where a written record title is given, no juridical possession is required by Mexican law. In fact the only cases cited by the court in the Ainsa case upon the matter of juridical possession were of instances where the *grants themselves* stipulated that such possession should be given.

Furthermore, I do not read the Ainsa case as deciding, independently of the assumed treaty requirement of location of grants, that juridical possession is essential to a valid Mexican grant.

In the California grant cases, many of which, from the leading case of Fremont down, were before the Supreme Court of the United States, no such rule of law as distinguished from contract stipulation was ever laid down; notwithstanding those grants were gifts, upon onerous conditions, and not sales for a price paid as we have in the Arizona grants.

Fremont vs. U. S., 17 How., 557.

The Act of 1891, admitting these grants to adjudication, provides that grants *perfect* or *imperfect* may be confirmed.

The closest scrutiny of the Act does not disclose any provision at all based on the idea of "location" or "juridical possession" mentioned in the English version of the treaty with Mexico and in the Ainsa case,—but, on the other hand, the whole scheme of judicature specified in the Act, both in its declaration of the cases in which, and the laws by which confirmation shall be made, as well as the negative limitations stated, by the terms of which confirmation shall be withheld or restricted, clearly indicate a desire on the part of this Government that these titles shall be tested by the same rules of law as were the grants in California.

Act of March 3, 1891, Sec. 7.

Id., Sec. 13, Subdiv. 1st-7th.

This leads us to the conclusion that the decisions of this Court rendered in the California cases involving Mexican grants are applicable



and authority upon similar questions arising in these cases.

Both the treaty and the Act of Congress relative to these grants being silent as to the necessity of "location" or "juridical possession," we have abundant authority in the adjudged cases in this Court that there was no such element necessary to a valid grant under Mexican law in the absence of a *stipulation in the grant* requiring the same.

"The right to so much land, to be afterwards laid off by official authority, in the territory described, passed from the Government to him by the execution of the instrument granting it."

Fremont vs. U. S., 17 How., 558.

See, also,

Hornsby vs. United States, 10 Wall., 224-232.

Ainsa vs. United States, 161 U. S., 221-223.

## FIFTH

This grant is claimed by the Government to be void

“because of the uncertainty in the description of the land attempted to be granted.”

Govt. Brief of Oct. 11, 1897, p. 26.

“**Elements of Description—In General.** The elements of description are the natural and artificial monuments, the courses and distances, and the quantity of the land. A full description should contain an enumeration of all of these elements.”

“The relative value of the various elements is in the order above stated, on the ground that that which is most material and certain should prevail; but this rule is not inflexible.”

“When the calls are false, mistaken or repugnant.—It does not apply when the calls for monuments are false, mistaken, or repugnant, and when the rejection of a call for a monument would reconcile other parts of the description and leave enough to identify the land.”

“All the elements need not be employed, nor is it absolutely necessary to use all the elements, or to describe land by its abutments. It may be designated by a particular name, as ‘Mount Vernon,’ ‘White Acre,’ or such like.”

Vol. 4, Am. & Eng. Enc. of Law, 2nd Edition, pp. 760, 761.

The grant or patent contained in the "titulo" is of a specific tract of land described as follows:

"Eight sitios of land for the breeding of horned cattle and horses, embraced in the place named San Ignacio del Babocomari, situate in the jurisdiction of the Presidio of Santa Cruz," \* \* \* "with all their entrances, exits, uses, customs, servitudes, woods, pastures, waters, watering-places, and all other things thereto pertaining. \* \* \*"

See Record, p. 78.

Then follows a record of an actual survey by metes and bounds of the tract granted.

Particular attention is called to the fact that this tract is sufficiently described by the name of the place, "St. Ignacio del Babocomari," and the area eight leagues, situated within the Presidio of Santa Cruz, and would be a good grant and sufficiently designative of its location under the authorities cited in the point last made. But there is no defect in the survey which at all makes it necessary for us to resort to the position above stated, however safe we might be in doing so. The survey,—the record of which is in the

*testimonio*, as shown from pages 73 to 76 of the record—discloses ample data from which to locate every boundary of the grant as surveyed by the Mexican authorities. The location of all the natural monuments ~~are~~<sup>is</sup> proven.

Testimony, Roskruge.

It requires but a reading of the argument made by counsel for the Government upon this point to determine that the criticism of this survey, when tested by the established rules of construction of descriptions in deeds or grants, is unwarranted by the facts. It is apparent, as counsel for the Government admits (see brief, p. 31), that the Mexican surveyor attempted in his notes of survey to read *both ends of the needle in noting the courses run by him*. In some instances the direction of *one* end of the needle was recited in a manner impossible to be understood, while the *other* end of the needle was stated to *point a course both possible and intelligible when construed with other parts of the notes*. In each of these instances the expert witness, Mr. Flipper, in his testimony, and

counsel for the Government in his argument, both violate every rule of construction by giving to such misnoted calls controlling weight to render the description uncertain, instead of giving the intelligible calls weight rendering it certain.

The case of *Higueras vs. U. S.*, 5th of Wall., p. 834, is found to be very similar to the one at bar in the particular in question. The Court was there construing a decree of confirmation of a Mexican Grant situated in California and used this language:

"Most, or all, of the courses given in the decree are undoubtedly erroneous; but there is very little difficulty in ascertaining the cause of the error, and still less in the conclusion that the errors in that behalf ought not to control the questions under consideration, not be suffered to affect or prejudice the rights of either party. Unlike what is usually to be seen in Mexican expedientes, it appears in this case that two of the disenos or maps of the tract exhibited in the expedientes contain on their face a delineation, as on a card, of the four cardinal and other principal points of the compass. Referring to the delineation, it will be seen that *north*, as there

delineated, is in the place of *northwest*, and that the corresponding error occurs throughout the delineation. Make the correction suggested, and the representation of the points of compass would be substantially correct in all respects; or, in other words, read north for northwest and northwest for north, and there would be little or no incongruity between the monuments given in the decree of the courses as therein laid down."

This doctrine is affirmed in the case of *Ayers vs. Watson*, 137 U. S., 604.

Disregarding such of the readings of the notes of survey as state unintelligible courses, we find ample data, not only by natural monuments, but by courses and distances given to describe the land granted.

As to the *west half* of the tract lying between the well known and undisputed natural monuments, the Cienega (spring) of Babocomari and the Hot Springs, there can be no candid claim made that the grant is uncertain as to description.

The plan of this survey is that established by the law of Spain and Mexico,—of measuring interior lines from a central point to the exterior

boundary, leaving the side lines to be implied (Ordenanzas de Tierras y Aguas, 181).

The initial point of the survey was at the "cross monument in front of the Cienega San Ignacio Babocomari." The bearings were taken with a mariner's compass, and though discrepancies are found either in the reading or recording of the bearings, a little study will readily determine their true meaning. The distances were measured with a rope or cord 50 varas in length. The first course, W.S.W.  $\frac{1}{4}$  W., 100 cords, or 5000 varas, was the first day's run. The following day the same course was continued 300 cords more, making a total of 400 cords, or "4 sitios," or 20,000 varas, and ending at the Hot Springs.

The west end line, at right angle to the first course, was run N.N.W.  $\frac{1}{4}$  N.E. 40 cords, or 2000 varas, and S.S.E.  $\frac{1}{4}$  S.W. 60 cords, or 3000 varas, establishing N.W. and S.W. corners.

Returning to initial point, the "center monument," the course thence was run E.N.E.  $\frac{1}{4}$  N.W. 74 cords, or 3700 varas, and completing the second day's run.

On the third day the same course was continued to a total of 400 cords, or 4 sitios, 20,000 varas, and the east end line, at right angle to former course, was run N.N.W.  $\frac{1}{4}$  N.W. 40 cords, or 2000 varas, and S.S.E.  $\frac{1}{4}$  S.E. 60 cords, or 3000 varas, establishing the N.E. and S.E. corners, which completed the survey.

It will be observed that on the second day the course recorded from initial point was E.N.W., which was evidently an error either in the reading or recording, but taking the easterly end line, which was, as stated, at a right angle, or 90 degrees from the former line, we find it is N.N.W.  $\frac{1}{4}$  N.W., an intelligible course from which we can correct the error of the former course. The accompanying map will clearly illustrate the foregoing statements.

The variation of the magnetic meridian is at present  $14^{\circ}$  east; its annual change is  $+3'$ , which would be for 70 years  $3^{\circ} 30'$ , making the variation in 1828  $10^{\circ} 30'$  east.



Scale: 1 inch = 10,000 feet

N 11° 15' W True  
 100 cords = 5000 paces  
 N 11° 15' W True  
 100 cords = 5000 paces

W 51° 15' N True  
 78° 45' N Mag. 400 cords. 3000 paces  
 8 mi. clay runs

Rancho San Ignacio

3 leagues

ENE 11° 15' W True  
 56° 15' N Mag. 400 cords. 3000 paces  
 3 mi. clay runs

N 11° 15' W True  
 100 cords = 5000 paces  
 N 11° 15' W True  
 100 cords = 5000 paces

July King 66

Assuming for the purpose of the argument that the east end monuments cannot be found, the record furnishes that by which we can locate them. That the course from Cienega Babocomari to east end line can be no other than that stated above is conclusively demonstrated. We have the given factors.

- a. The Cienega as a center.
- b. The radius 400 cords from the Cienega to the east line, intersecting such east line 40 cords S. of northerly end, and
- c. The *direction* of the east end line which is tangent to the circle of which the Cienega is the center.

The result follows that projecting a line 400 cords from the center at Babocomari Cienega, in a direction easterly at right angles to the *direction* of the east line, will correctly *locate* the easterly center line monument as originally surveyed.

“A straight line perpendicular to a radius  
“at its extremity is tangent to the circumfer-  
“ence.”

“Cor. 2. At a given point of the circumference only one tangent can be drawn to “the circle.”

Davies' Geometry (Legendre), pp. 64, 65.

Summary of points as to description:

1. The grant carries area embraced within the natural and artificial monuments as shown by the Roskruge map in the record; or,

2. If the natural monuments do not control, then the grant carries as its *west half* a tract *one league wide* extending from the clearly proven monuments, the Cienega Babocomari to the Hot Springs; also as its east half four leagues easterly from the Cienega on the course perpendicular to the course of the east line stated in the survey; or,

3. If all the monuments and all of the courses and distances are rejected, the grant carries *eight leagues* to be located at the *Place San Ignacio del Babocomari*, in the jurisdiction of Santa Cruz, as the same existed at the date of the grant.

Respectfully submitted,

BYRON WATERS,  
Attorney for Appellant.



## APPENDIX.

Digest of historical data relative to questions  
involved in this case.

---

1800. Estimate of population of **NEW SPAIN** at the beginning of the 19th Century, and its constituency, by Humboldt.

1--Gachupines, (whites born in Europe) }	-	1,100,000
2--Creoles, born in America,	}	
3--Indians,	- - - - -	2,500,000
4--African Negroes,	- - - - -	6,100
5--Mestizos, descendents of whites and indians }		
6--Mulattoes, " " " " negroes }		1,231,000
7--Zamboes, " " negroes " indians }		
Total,		5,837,100

*Humboldt's New Spain*, [John Black] 1811, Vol. II, p. 246,—  
Id. Vol. I, p. 183.

---

Upon the conquest by Spain, all Indian property, both land and goods, was conceived to belong to the conquerer.

Id. Vol. I, p. 136.

The services of the Indians were shared out upon *Encomiendas*, to the officers of the army of Spain and to the monks.

Id. Vol. I, pp. 136-7.

This system of slavery was annulled by King Charles III, and he also prohibited the *repartimientos*, by which the *corregidores* arbitrarily constituted themselves the creditors, and consequently the masters of the industries of the natives, by furnishing them at extravagant prices, with horses, mules and clothes.

Id. Vol. I, p. 138.

Next was placed the administration of Indian industry in the *intendencias*, whereby the labor of the Indian, as under the system of the *encomiendas* was enforced; but instead of inuring to the benefit of a personal master, went to the royal treasury, as a trust fund, for the benefit of those who earned it, but who could never receive recognition.

Id. p. 144.

This oppression was inflicted upon all Indians and castes, constituting more than three-fifths of the population of New Spain, and the condition of the creoles, (who made ninety per cent of the white population,) was politically but little better, owing to distrust of them by the court of Spain.

Id. p. 153.

1810. Out of these wrongs grew the Mexican revolution.

1821. Independence was gained under the plan of Iguala, which was that of a limited monarchy, securing the Roman Catholic religion, and the equality of the Spaniard, creole, Indian, African and all castes, as citizens, and alike eligible to places of honor and trust.

History of Mexico, [Huntington,] Vol. I, p. 168.

1822. Pending temporary organization, Iturbide procured his election by the provisional Cortes as Emperor, and immediately he insisted that his power should be well nigh absolute, and fixed so by the written constitution, and the

controversy, which was thus continued for a year, resulted in the resignation and banishment of Iturbide in 1823.

In 1824 it was proposed in Congress to adopt a central government, which in some of the provinces caused such alarm as to occasion civil commotions and open revolt.

This popular feeling had no doubt great influence in causing Congress to adopt the federative system of government, and on February 2, 1824, a federal constitution was adopted.

Id. 192.

1823-4. *Bancroft's History of Mexico*, Vol. 5, pp. 1-44.

Under the rule of the Montezumas, as well as after the conquest by Cortez, Apache prisoners were made slaves in the *tierra caliente*, where hasty death to them was certain.

*Humboldt's New Spain*, Vol. I, p. 179.

1835-47. The Central System, *Bancroft's History*, Vol. V, pp. 151-260.

1846. Lt. Col. Emory traversed Arizona and wrote an interesting account of the Gila and San Pedro Section— New Mexico and California.

Emory, pp. 77, 98.

1846. Lt. Col. Cook also saw San Pedro, and fed his Mormon Battalion on the wild beef of the Babocomori and Boquillas Ranchos.

Id. 555.

1851. Col. Graham, and his surveying parties engaged in locating the national boundary line, luckily came to San Pedro and Babocomori at a time when their supplies were totally exhausted, and found there the only beef that was between El Paso, Texas, and San Diego, California.

*Report of Col. Graham, Mexican Boundary*, pp. 32-45.

1863. J. Ross Browne accompanied Superintendent of Indian affairs for Arizona, Charles D. Poston, upon a tour of southern Arizona, and the former wrote a most entertaining account of the country, its peculiarities, its people and its history. His chapter devoted to the Gadsden purchase gives the best description of the civilization, or rather barbarism, with which southern Arizona has been afflicted, that has found expression.

*The Apache Country*, by J. Ross Browne, pp. 11-26.



of  
our  
in-  
and  
two  
ar-  
ed,

*Filed - Oct 20, 1907*

**Supreme Court of the United States**

**OUTGOING TERM, 1907**

**ROBERT PENNIN, Appellant,**

**THE UNITED STATES, Appellee.**

**ADDITIONAL BRIEF FOR ROBERT PENNIN BY  
HIS ATTORNEY, JOHN T. MORGAN.**

**JOHN A. DARWIN, Printer, Washington, D. C. 1-12-08**

IN THE  
**Supreme Court of the United States.**

**OCTOBER TERM, 1897.**

---

ROBERT PERRIN, APPELLANT,

*vs.*

THE UNITED STATES, APPELLEE.

---

**ADDITIONAL BRIEF FILED BY LEAVE OF THE  
COURT.**

---

I.

Some additional facts have come into this record by stipulation, and other facts appear historically, from official maps and records, to wit: (a) the certified Spanish copy of the original expediente, taken from the Mexican archives at Hermosillo, which was not put in the record in the Court of Private Land Claims, and a translation thereof into English, made by an official translator of the Bureau of American Republics, which are on file in this cause and are printed as part of the record. Said papers are referred to as a part of this brief.

And (b) an official map of Arizona, showing the surveys of that Territory by the United States, certified by the Commissioner of the General Land Office, a copy of which is herewith filed as part of this brief, marked Appendix 1.

And (c) a record from the War Department tending to impeach the testimony of H. O. Flipper, a witness for the United States, who has also been commissioned by the special attorney of the United States, appointed under the act of 1891, to examine the records of land grants in Sonora. This paper is relied upon as an admission of the United States, the appellee in this cause, of record in the War Department, that said Flipper was dismissed from the army as an officer upon charges and specifications found to be true by the judgment of a lawful court-martial; which charges and specifications include a military offense which is the moral equivalent of perjury, and of the embezzlement of public funds by said Flipper, a copy of which record is appended to this brief, marked Appendix 2.

Attention is also invited to extracts from the record in the case of the Calabasas grant, showing the condition of ruin to which that region of country along the San Pedro river and Babocomori creek was brought by the wars of the Indians as late as 1854. An extract from the deposition of Peter R. Brady in that case is appended hereto, marked Appendix 3.

## II.

On various facts of an historical nature touching the "usages," "customs," laws, and practice in making land sales and grants in Mexico, reaching back to the origin of the "nation," and on the proof of the construction of land laws by experts, the appellant in this case, invites attention to the deposition of Juan A. Robinson in the record in Coe's case, pages 64, 65, and to the deposition of Kitchens in Ainsa's case (Record, pp. 55, 56), and to the deposition of Castenada, and the deposition of Forbes in Coe's case, and to Hopkins' report, as an agent of the United States, made to the Secretary of the Interior, and to the report of Wasson, surveyor general, in Ainsa's case, all of which are

evidence against the United States as to matters they were instructed to report upon.

These additional proofs, except those brought into this record by specific stipulation, are cumulative for the most part, but they explain facts that are not so distinctly stated in the record in this case, and are referred to, on this rehearing, under the statute.

The parts of the testimony of H. O. Flipper in the case of the Calabazas grant, on pages 204, 205, 206, and pages 212, 213, 225, 227, relating to his interest in these suits, and showing that Mexican land grants for centuries were marked as to location and boundaries by natural objects and monuments, instead of lines defined by actual measurements, and by the courses and distances given in the notes of the surveyors, are hereto appended and marked Appendix 4.

### III.

In article VI of the treaty of 1853 the English translation is clearly erroneous in attributing to the Spanish word "inscribir" the definition "located." This English word may have been used by our negotiators as being appropriate to describe or to include floating grants, like our land warrants, or more like the grants then recently made by Santa Anna to the heirs of Iturbide. But the Spanish word "inscribir," if it ever admits of that definition, is almost universally employed as signifying "in writing" or "written," as contradistinguished from our less accurate words "oral," "unwritten," or "parole," when it is applied to contracts, etc. The following definitions of the word "inscribir," taken from a standard Spanish dictionary, supported by the statements of the official translators in the Department of State and of the Bureau of American Republics, show that this verb is not used in Spanish to express the sense of "located" in the English language.

INSCRIBIR.—(Del lat. *inscribere*.) a. Grabar letreros en metal, piedra ú otra materia.—Apuntar el nombre de una persona entre los de otras para un objeto determinado. For. Extender en los libros del registro de la propiedad los asientos definitivos de los títulos por los que se constituye, traslada ó extingue el dominio de los inmuebles, ó algun derecho real.—Geom. Trazar una figura dentro de otra, de modo que, sin cortarse ni confundirse, estén ambas en contacto en varios de los puntos de sus perímetros.

Diccionario de la Lengua Castellana por la Real Academia Española, 12ª edición, 1884, pp. 600.

*Translation.*

INSCRIBIR.—(From the Latin *inscribere*.) Verb, active. To engrave letters on metal, stone, or other substance. To write the name of a person, among those of others, for some determinate purpose. Legal: To spread upon the books of record of property the definitive entries of the titles constituting, transferring, or extinguishing the ownership of real estate, or some absolute right. Geometry: To draw a figure within another, so that they shall both come in contact at various points of their perimeters without crossing each other or commingling.

Dictionary of the Castilian Tongue of the Royal Spanish Academy, 12th edition, 1884, pp. 600.

I hereby certify that the foregoing are respectively a true copy of the definition of the word *inscribir* in the Spanish Academy Dictionary and a translation thereof, the latter being literal and correct.

A. W. FERGUSSON.

WASHINGTON, D. C., *March* 18, 1898.

I hereby certify that the definition, copied from the Spanish Royal Academy Dictionary, of the verb *inscribir* is a true copy; that the translation of said definition made by A. W. Fergusson is correct, and that the word *inscribir* can in no sense be taken to mean "to locate" in English.

H. GUZMÁN,

*Chief Translator, Bureau of the American Republics.*

"Located" is undoubtedly an erroneous translation of "inscritas."

HENRY L. THOMAS,  
*Translator to Department of State.*

WASHINGTON, *March 18, 1898.*

The argument of the counsel for the Government relies upon a definition of "inscribir" which in some of the lexicons is applied to a geometric figure or delineation. There is no reason for the application of such a method of description to Mexican land grants, of which maps are never made by that government.

The learned counsel gives no weight to the legal definition of "inscribir," which he quotes on page 12 of his brief as follows:

"To spread on the books of the registry of property the formal entries of the titles by which the dominion of immovables or of some right real is constituted, transferred, or extinguished."

The geometrical meaning at best is only special and not general, applying only to the class of figures described, and it is not to be supposed that in the framing of a treaty the negotiators adopted what is at best a very strained acceptance of a word.

On page 13 of the brief is the following statement:

"There is no better way of arriving at the meaning of words in use by foreigners than by consulting the dictionaries written by themselves in their own language."

The Royal Academy Dictionary, edition of 1884, defines "localizar" as follows: "Localizar.—(de local.) a. Fijar, encerrar en limites determinados." Translation: "Localize.—(From *local* (place) active. To fix; to enclose in definite limits."

The verb "to localize" is defined by Webster (Int. Dict.,

ed. 1898) as "to make local; to fix in or assign to a definite place." This latter part you will see is an almost verbatim reproduction of the Spanish definition; but it does not mean, as the brief says on page 14, 'to locate,' in the sense of ascertaining where a thing is."

Mr. Flipper claims (p. 14) to "have been a close and diligent student of the Spanish language and literature for the past twenty-four years, and knows no Spanish word that so accurately expresses the meaning of 'located,' as used in the treaty, as does the word 'inscritas.'"

The gentleman then proceeds to cite a number of words which "partially express the same idea;" but despite his long and diligent research into Spanish literature he has failed to discover the word which *fully* expresses the idea of "to locate," viz: "Demarcar." Webster defines the English verb as follows: "To designate the site or place of; *to define the limits* of; as to locate a public building; to locate a mining claim; to locate (the law granted by) a land warrant."

The Royal Spanish Dictionary, edition of 1884, defines "demarcar" as follows: "Delinear, señalar los límites ó confines de un país ó terreno." Translation: "To delineate, *to define the limits* or confines of a country or land." The underscored words in each definition are identical.

All Spanish-speaking people are proverbially redundant and never allow an occasion to pass without using two or more words where one would suffice. Whoever translated the English text of the treaty was either ignorant of the technical meaning of "located" as there used or he was careless and fell into the besetting sin of his race and used a synonym of "record," *i. e.*, "inscribe," else he would have said, "No hayan sido *demarcadas* y debidamente registradas en los archivos de Mexico."

It is safe to say that there is not a Spaniard or Spanish-American living who is acquainted with the English who would translate "locate" into "inscribir."

## IV.

As the word "located" is used in construing this treaty to support a severe restriction upon Mexican titles that are to be recognized by the United States, and as the Spanish word "inscribir" does not include such restriction, it is the right of Mexican claimants to land to be exempt from the harsh effect given to it by the English version of the treaty, unless that definition is necessary to give effect to the treaty in its general purpose.

The purpose of article V of this treaty and of the articles therein referred to in the treaty of 1848, and of the French treaty of 1803, *was to preserve all claims to lands existing in the right of the Mexican people as against their government, whatever may have been the nature of the claim, if it was lawful and was not opposed to Mexican public policy.*

And, if there were diverse definitions of "inscribir," some inconsistent with others, the Mexicans have the right to that definition which is least drastic and injurious as to their rights.

## V.

The English word "located" was plainly intended on the part of the United States to deny the validity of secret conveyances, and to prohibit floating grants issued by Santa Anna's government or by the Republic from absorbing the lands sold to the United States under the treaty.

This definition, though it is not correct, is in accordance with the understanding of the Mexican government as to such grants; and, in their language, this purpose is fully expressed by the word "inscribir," which signifies "in writing," because a grant, in Mexican statute law, must be in writing, it must be specific, and it must be held in the archives and registered—not recorded—in the *toma de*



razon, and from that matrix of original papers, constituting the grant, a titulo or patent issues to the grantee, which refers to and describes the original papers.

These provisions of Mexican law as to all sales of land clearly incude a survey, which must include a location of the "grant," if a sale is a grant; and, when it was intended in the treaty to protect the United States against surreptitious, or concealed, or floating grants, the words "inscritas y debidamente registrados," which mean "in writing and registered," fully protected the United States by putting all public grants of land on a footing with the sales of land as to their being in writing and located and registered, but not as to their being surveyed, for a grant may be definitely located without the land being surveyed; but a sale of land must be surveyed to make the sale regular under the statutes of Mexico and of Sonora.

## VI.

Aside from all controversy as to the meaning of the language of section VI of the treaty of 1853, and whether the Spanish word "inscritas" or the English word "located" shall prevail for the protection of Mexican land-holders and claimants, Congress, in prescribing a law for the administration of rights under these treaties, has not adopted the construction contended for in this case by the counsel for the Government as to the rights of Mexicans which they were intended to protect and the claims that were intended to be disallowed.

In the second paragraph of section 6 of the act of 1891 the requirements of the petition on which relief may be granted by the court are that it "shall set forth fully the nature of their claims to the lands, and particularly state the date and form of *grant, concession, warrant, or order of survey* under which they claim."

If the treaty had been construed by Congress, as it is construed by counsel for the United States in these cases, as meaning that no claims are valid that are not "located" and recorded, the court would not have been given jurisdiction to confirm claims based on warrants "or orders of survey" which could not be "located" on the ground until the survey had been completed; yet jurisdiction is given expressly to complete all surveys, even where the grants or sales are otherwise perfect.

In this legislation Congress clearly followed the Mexican laws and their construction of the treaty, that the grant or claim must be "in writing" and must be registered, but that it may be valid without having been "located" by any specific act or proceeding beyond the description of the land given in the titulo, or the expediente, or the warrant, or the order of survey that had been delivered by the Government to the claimant.

## VII.

The word "located" was not intended to add a new requirement as a test of the validity of a "grant" of lands which was not then recognized in the laws of Mexico. It was only intended, if it was in fact used in the Spanish version, to protect the United States against a surreptitious use of the granting power and not to change the Mexican laws as to the validity of grants which for years had been in the possession of honest claimants or owners. It was a question whether the segregation of lands by a verbal grant, or by a grant not located (if in writing) from the *public domain*, which was being sold to the United States, should be sustained by acts or decrees of a secret nature, issued under the temptation of surrounding circumstances, to favorites or for selfish purposes, by the President of Mexico then in power.

These circumstances were sufficiently obvious to account for the caution of our negotiators in putting in article VI

as an afterthought, for such it evidently was. No such provision was inserted in the treaty of 1848 respecting the location of grants, nor was it put into the treaty of 1853 at the time the purchase of the territory was agreed upon by the respective negotiators, viz., the 25th of September, 1853. Why it was then found to be necessary is apparent from the current history of Santa Anna's revolution, which was then "in the high tide of successful experiment."

### VIII.

Treated as a means of disturbing and restricting all Mexican grants, sales, titles, and claims to lands, without any limit of time as to its operation, the language of article VI is simply absurd. The last clause of that article, if so intended, would have reached that result if it could be made to comport with article V so as not to extinguish rights and claims secured by that article.

The last clause in article VI refers to the first clause, which fixes the 25th of September as the date after which the restriction as to location and registry of grants should take effect. But that date is retained in the article, and it is added in the last clause that grants should be invalid if they were not located and registered, without reference to the date of the issue. The last clause annuls the first clause, and yet it is left standing in the text. To produce this very anomalous situation the negotiators must have had in view some facts of current history as to the issue of grants by Santa Anna that created a new and peculiar situation that was different from that which existed under Mexican laws on the 25th of September, 1853, and was not publicly known at that date.

It was to guard the United States against this new condition of affairs that this otherwise inexplicable article was inserted in the form it is found in the treaty.

A chronological reference to the following historic events furnishes that explanation:

February 6, 1853, the second plan of Jalisco, in article 91, conferred the presidency on Santa Anna for the unexpired term of one year.

March 11, 1853, he granted to the heirs of Iturbide 30 leagues square—*900 square leagues of land*—in payment for an alleged debt of the provisional sovereign council of government, under a decree of February 22, 1822, for \$200,000, "which they will receive necessarily in public lands in Lower California or Sonora or in Sinaloa, at the option of the parties in interest, to the extent of thirty leagues square, with the right to take them all at one place or at different places if it suits them." (Reynolds, p. 322.)

September 21, 1853, Santa Anna issued the following decree:

"His Excellency the President of the Republic has been pleased to order that what has been heretofore called States be hereafter called Departments; and, by supreme order, I have the honor to communicate it to Your Excellency for punctual compliance therewith, assuring you of my consideration." (Reynolds, p. 323.)

November 25, 1853, Santa Anna declared that the public lands are the exclusive property of the nation and never could have been alienated by the States, and he declared such titles null and void, but did not so decree them. (Reynolds, p. 324.)

In 1854 he annulled them by a decree.

December 16, 1853, Santa Anna declared himself President for life. (Reynolds, p. 325.)

July 7, 1854, Santa Anna by decree annulled the titles to lands given by the States, his decree in 1853 being modified as to its scope. (Reynolds, p. 326.)

## IX.

As the VI clause of the treaty of 1853 did not purport to change the treaty of 1848 as to the rights of Mexicans in their claims to lands, the scope of that article does not include land grants made prior to 1848, the date of that treaty, and this fact, together with the grant of 2,700 square miles of land to Iturbide, shows that our negotiators intended to suppress the grants made to Iturbide and all other grants made by Santa Anna in the ceded territory, of which there was no specific designation in writing of their location, and which had not also been registered in *toma de razon*.

## X.

Mexico never had a general survey of its lands, either in the States or Territories, so that it was impossible to "locate" or to find the location of tracts of land that were segregated from the public domain, by reference merely to the field-notes of a survey without the aid of natural or artificial monuments or of astronomy. Their surveyors were not highly skilled. They had no astronomers or geometricians in their frontier settlements, and their compasses or other surveyors' instruments were not indexed in degrees, minutes, and seconds. They were very rude, but were the Galvan standard at that early day, and all surveys were made with these inaccurate instruments. Necessarily, therefore, they could not make perfect surveys, and they located lands by the names of places when they had names that were generally recognized, or otherwise by reference to natural objects, which were described in the field-notes of their surveys, and the demarcation of surveys were in like manner designated by their bearings toward natural objects, roughly stated. The *measurement* of surveys, often made by computation, were also designated by natural and arti-

ficial monuments that the laws required the grantee to erect, under a penalty if he neglected that duty.

To erect such monuments was not to "locate" the grant, but to preserve the evidence of its measurement, and to describe its location.

## XI.

The Babocomori grant, however, was "located"—placed—geographically, by universal understanding among the people and the government officials, and was well known in the church and among the herdsmen and Indians.

No one who wished to find its location could ever fail to do so, because it included Babocomori creek, a stream in an arid country that emptied into San Pedro river; and the creek and the place, surrounded on three sides by mountains, comprised the only place in the world that was known by that name. Its name was baptismal. One who sought to find this place would never go to a Mexican map or land plat for information, for the reason that none were required by law, and few were made for private use; nor would he examine for a survey that indicated the actual outer boundaries of a grant, because such surveys were seldom if ever made.

A center line or course intersected by end lines based on actual or estimated measurements is valid in Mexico and answered for all surveys by the government in 1827 and since that time.

The survey and all the proceedings in this *expediente* and *título* relate to a well-known place, not too extensive for two stock ranches, named—called—San Ignacio del Babocomori, which was, from the earliest days of Spanish dominion, so definitely "located" that no one, even a stranger, could mistake it.

It was both located and registered in the archives of Mexico in accordance with Mexican law, if those require-

ments apply to this grant and are necessary to its legal validity.

## XII.

If the grant is held to be invalid for the reason that it was issued by a State, and that Santa Anna's decree revokes all grants issued by the States, that does not exclude it from the jurisdiction of the court, nor does it give to the United States the better right to the land, because Congress declares in the act of 1891, in section 13, that a claim to be allowed must "appear to be upon a *title*," which may or may not be by grant "lawfully and regularly derived from the government of Spain or Mexico, *or from any of the States of the Republic of Mexico* having lawful authority to make grants of land." No State of Mexico could have authority to make grants of land which was in lawful, private ownership, and this provision of the law of the United States would be absurd if it did not apply *to the public lands within a State*; so Congress recognizes in this act the validity of a title derived from Sonora, if Sonora has the lawful authority to make grants of land under the constitution of Mexico, and it disregards the declaration of Santa Anna that the States could have no such authority to make any grants whatever.

It seems very clear that Congress would not have given the court jurisdiction to enforce a land grant made by a State if Santa Anna's decree had been respected to the extent that no State ever had authority to make such grants of vacant lands. That decree is retroactive, and such laws are expressly forbidden by the Constitution of 1824, which also prohibited amendments that would repeal that clause.

## XIII.

The copy of the original expediente in this case, brought into the record by stipulation, relieves the survey of some of the uncertainties that furnished the basis of argument, against the validity of the grant, to the counsel for the Government.

It now appears that the alcalde who made the survey met the other parties at the rancho San Pedro on one day and summoned the colindantes; went from that place on a day appointed a month later to the place called San Ignacio del Babocomori, in company with his assistants, and established at the cienega the point that should be the initial point from which the center line of the entire survey should be established, eastwardly and westwardly.

At this initial point he caused to be erected a monument on a small hill in front of the cienega of Babocomori. This is a center that is located definitely by three prominent natural objects, viz., the creek, which was well known by name; the cienega, which was connected with the creek and is the only cienega in that part of the country, and the small, bald hill in front of the cienega on which a monument was placed. All these objects, including the monument which Flipper and Roskrue found, are still there and are unmistakable.

It is rare to find in any country, after the lapse of seventy years, such permanent and conclusive witnesses to the location of the initial point of two extensive surveys—one to the east and the other to the west—each twelve miles long.

#### XIV.

This correct copy of the expediente also clears up the difficulties in the "courses" that were so disturbing to Mr. Flipper's conscientious imagination. In the titulo (patent) that was issued to the Eliases several years after the sale of the land, the copyist substituted capital letters, as N. N. W. and S. S. E., &c., for written words in the expediente, and his clerical mistake has greatly confused Mr. Flipper in testifying as to the location and measurement of the grant. He found the acreage of the grant to be excessive, but declares that no one can follow the survey. He examined the original survey in the expediente at Hermosillo and testified that the survey in the titulo, as it is set out in this



record before it was amended, is a true copy of that expediente as to the field-notes of the surveyor, when the copy of the expediente, as it is now produced in the record, contradicts that statement.

## XV.

It is clear, as the record is now, and it was clear before the copy of the expediente was produced, that the courses of the survey can be followed by any competent surveyor, and that they lead directly to the natural objects and to the monuments described in the calls of the surveys. The only difficulty is the measurement of the central line. These courses and calls establish the central lines of both surveys, extended from the center monument, in front of the cienega. The end lines of the sitios, *at right angles* to the center line, lead from both ends directly to the center monument, at the cienega. This gives a geometric demonstration of the lines of the survey as it was actually made, and locates the center monument also, by reference to those at each end. It is very remarkable that, as to the center lines of the survey, it should have been so accurate when made with such imperfect instruments. As to the measurement, that was not pretended to be correct, as much of it was mere computation. As to the outside boundary lines, they were not laid down, nor was that a requirement of a valid survey in Mexico, either by law or usage.

## XVI.

As to the excess of land in the place surveyed and demarked by the central line and by marked corners, that was well known to all the officials employed in making the sale and was stated on the record, and it was approved by all of them. The excess was provided for in the petition of the Eliases, set out in the titulo, *who did not claim any cer-*

tain quantity of land or any number of sitios, but claimed the "place called Ignacio del Babocomori," for the grazing of cattle and horses.

The law permitted the sale of only four sitios to one person, and that was also the legal basis of the valuation of the land.

But section 21 of the law of Sonora, May 20, 1825, which is referred to in the expediente, provides that "to no one who is a new breeder of cattle shall more than four sitios be given," and "22. To those who, from the abundance of their stock, need more, although old breeders (being old breeders), the Treasurer General shall grant only so much more as they need." These powers are not in conflict. (Reynolds, p. 130.)

Here is power to grant more than four sitios to an old breeder of stock, given to the Treasurer General, and his discretion is only limited by the needs of the old breeder of stock. It is an *ex parte* proceeding until the final auction of the land, depending upon the almost unlimited discretion of the treasurer as to the quantity of land he will adjudge to an old breeder of stock. The record shows that the whole subject was considered and adjudicated by the Treasurer General after investigation and report in writing made by the Attorney General under section 24 of the law. Section 25 enables the Treasurer General, upon proof or secret information, to investigate the whole subject, with all these ample powers to adjust the grant to the needs of a stock-breeder, without his participation in the proceeding further than to point out the land. The Government cannot repudiate the entire grant after the lapse of seventy years, during all of which time possession of the place granted has been actually held, as far as has been possible, even at the expense of human life in defending it, by the grantees and their successors.

Mexico had cut itself off from the power to question the validity of this grant on the ground that the quantity of

land conveyed was excessive. Whether or not it was excessive, that place was segregated from the public domain, and at least eight sitios were granted, and this court of equity has ample power to correct the excess and still save the grant, under the express provisions of the act of 1891.

But this court cannot correct the excess if it was lawfully within the power of the Treasurer General of Sonora to allow it in the grant, and he did allow it to an old breeder of stock. If this grant is now invalidated for the reason that it was sold for too small a sum, who will refund to the Eliases or their successors the money paid for it?

The Eliases earned the excess of land, which was of no value to Mexico, many times over by their contributions of food to the people and by their frequent bloody conflicts in defending this advanced settlement, which Mexico engaged to defend against the Indians.

#### XVII.

In Appendix 4 to this brief the historical facts prove that the United States after it took possession of that country could not protect it against the Indians, who destroyed all the cattle ranches on the San Pedro and Babocomori, leaving them in ruins.

If men ever earned property from a government, this has been earned.

To this day no other ranches have been established adjoining Babocomori, except a military reservation to the south of it and bordering upon it.

#### XVIII.

Does the United States need this land for revenue? If so, its needs will never be met, for it is of little value and will never be sold for money. If it is appropriated as public domain, the beneficiaries will be a nomadic, squatter

population, who will be there to live off the cattle ranges, and instead of being honest men controlled by law, the evidence in this case shows that they drive off the lawful owners with bloody violence.

The owners of these land grants have been prevented by the violence of these squatters, of whom Flipper is one, from making a survey of the lands, so as to protect their titles and inform the court as to their rights.

These interferences, with threats and violence, are stated in the testimony of Roskrige and others, and they have prevented surveys with chain and compass to get the exact location of the landmarks and the area of the first survey.

### XIX.

In the report of the alcalde surveyor of the original survey, copied in the expediente in this case and in the titulo, there is some confusion in the readings of the compass, which is plainly due to the imperfect chirography or the spelling of Spanish words by the surveyor, or, possibly, by the copyists.

The courses, as stated, are sufficiently described to enable a surveyor to trace all of them on the ground. The confusion, in almost every case, comes from the reading of the compass in reverse, or in the "back sights." In some of the most important lines there is no confusion as to courses, and there is no confusion or want of clear description of the objects described in the calls, or in their relative bearings to each other.

These minor difficulties disappear in view of the conclusive evidence as to the actual location of the grant and its clear description by permanent landmarks, chiefly those of the water springs, the cienega, and the creek, which are conspicuous and unfailing features of the topography of a country that is generally arid and treeless, and in a narrow valley flanked with high hills and deep gulches.

With so many conspicuous natural objects to mark the locality and to define the survey of this grant, it is not in accordance with our treaty obligations or with the spirit and the requirements of the act of Congress of 1891 that the United States should claim title to the place called San Ignacio del Babocomori upon such slender and doubtful ground as a mistake in writing the field-notes of a survey made by an illiterate surveyor, who was selected and appointed by the government under which the United States derives its asserted title, to measure a tract of land for sale to its own citizens.

## XX.

We cannot afford to claim this land as the public domain of the United States against an open adverse possession of seventy years by persons who are, in the strictest sense, *bona fide* purchasers of this land, the price for which was fixed by Mexico and paid by the purchaser.

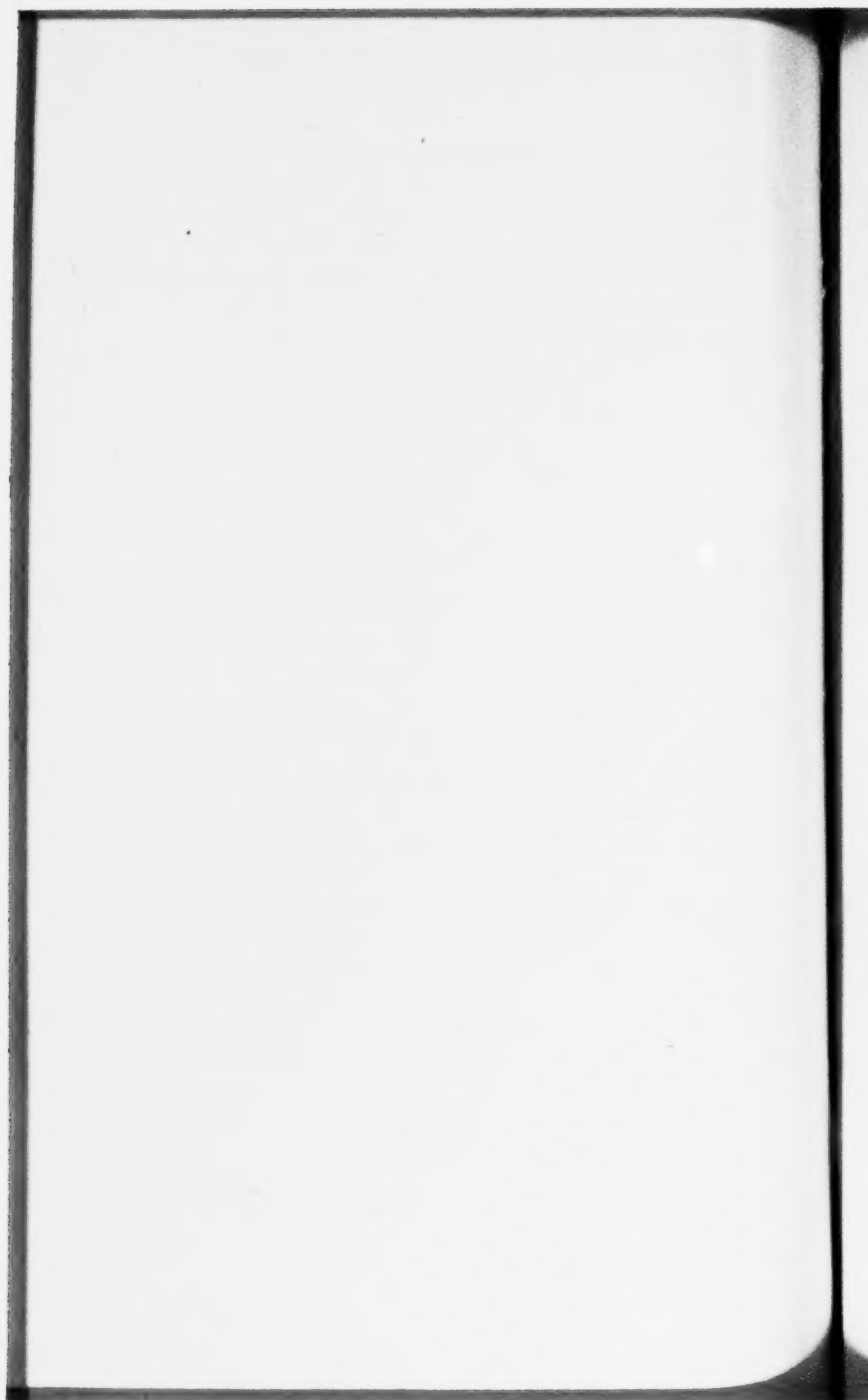
It is better and more just, in view of the language and purposes of the treaties with Mexico, to hold, as Congress has enacted, that any honest claim of a Mexican to land granted to him by his own country should prevail against the claim of the United States when a court, finding that the claim is equitable, is given the power to enforce it in any form and to any extent that Mexican law and good conscience demands, according to the facts of the transaction.

## XXI.

The international aspect of these cases is worthy of careful attention, especially in the features that relate to the enforcement of Santa Anna's decree of general confiscation. The time at which we entered into this treaty, the President of Mexico with whom we concluded the negotiation, and the fact that this transaction occurred when he was *in fla-*

*grante delicto* in the conduct of a bold usurpation that Mexico has denounced as a great national crime, all admonish us that there should be a solid foundation in law and justice to justify the United States in claiming lands that had been in the undisputed possession of honest Mexican citizens for nearly a half century, when our alleged right of property is derived from a decree of Santa Anna.

JOHN T. MORGAN,  
*Attorney for the Appellant.*



## APPENDIX 2.

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER  
TERM, 1897.

WILLIAM FAXON, JR., <i>Trustee, et al., Appellants,</i>	}	No. 119.
<i>vs.</i>		
THE UNITED STATES AND GEORGE W. ATKINSON		
<i>et al.</i>		

Appeal from the Court of Private Land Claims.

*Certified Copy of Court-Martial Order Dismissing 2nd Lieut.  
Henry O. Flipper from U. S. Army.*

Francis J. Heney, attorney for appellant William Faxon, Jr., trustee.

GENERAL COURT-MARTIAL }  
ORDERS, No. 39.

HEADQUARTERS OF THE ARMY,  
ADJUTANT GENERAL'S OFFICE,  
*Washington, June 17, 1882.*

I. Before a general court-martial which convened at Fort Davis, Texas, November 4, 1881, pursuant to Special Orders, No. 108, dated September 3; No. 131, dated October 18; and No. 133, dated October 22, 1881, from Headquarters Department of Texas, San Antonio, Texas, and of which Colonel GALUSHA PENNYPACKER, 16th Infantry, is president, was arraigned and tried—

2d Lieutenant *Henry O. Flipper*, 10th Cavalry.

CHARGE I.—“Embezzlement, in violation of the 60th Article of War.”

*Specification*—“In this: that 2d Lieutenant *H. O. Flipper*, 10th Cavalry, did embezzle, knowingly and willfully misappropriate and misapply, public money of the United States, furnished and intended for the military service thereof, to wit: three thousand seven hundred and ninety-one dollars and seventy-seven cents (\$3,791.77), more or less, which money came into his possession and was intrusted to him in the capacity of acting commissary of subsistence at the post of Fort Davis, Texas. This at Fort Davis, Texas, between the 8th day of July, 1881, and the 13th day of August, 1881.”



CHARGE II.—“Conduct unbecoming an officer and a gentleman.”

*Specification 1st*—“In this: that 2d Lieutenant *H. O. Flipper*, 10th U. S. Cavalry, having been directed, at or near Fort Davis, Texas, on or about the 8th day of July, 1881, by his commanding officer, Colonel William R. Shafter, 1st U. S. Infantry, commanding the post of Fort Davis, Texas, to transmit certain funds, for which he, Lieutenant *Flipper*, was accountable as acting commissary of subsistence, to the chief commissary of subsistence of the Department of Texas, and on being asked at or near Fort Davis, Texas, on or about August 10th, 1881, by Colonel Shafter, if he had transmitted the said funds, part of which were in checks, did then, in substance and tenor, assure him, Colonel Shafter, that he had transmitted said funds; that he had endorsed the checks making them payable to the order of said chief commissary of subsistence of the department, and sent the amount by mail; that he had taken the letter to the post-office himself, he, Lieutenant *Flipper*, well knowing the same to be false, in that the said funds had not been so transmitted and the checks had not been so endorsed.”

*Specification 2d*—“In this: that 2d Lieutenant *H. O. Flipper*, 10th U. S. Cavalry, being on duty as acting commissary of subsistence at the post of Fort Davis, Texas, did submit for the approval of the post commander, Colonel William R. Shafter, 1st U. S. Infantry, his, Lieutenant *Flipper's*, ‘weekly statement of public funds,’ in words and figures to wit:

SUBSISTENCE DEPARTMENT U. S. ARMY,  
FORT DAVIS, TEXAS, *July 9th, 1881.*

SIR: I have the honor to report my balance of subsistence funds on deposit and in hand at the close of the week ending Saturday, July 9th, 1881, as follows:

Deposited with the ass't treasurer of the U. S. at ———	..... \$
Deposited with the U. S. designated depository at ———	.....
Deposited with the ——— National Bank at ———	.....
Deposited ———	.....
In transit to chief C. S., San Antonio, Texas, since July 9th, 1881.....	3,791 77
In my personal possession, in office safe.....	150 17
Total amount.....	\$3,941 94

Very respectfully, your obedient servant,  
(Signed)

HENRY O. FLIPPER,  
*2d Lieut., 10th Regt. of Cavalry, A. C. S.*

To the CHIEF COMMISSARY OF SUBSISTENCE,  
*Headquarters Department of Texas, San Antonio, Texas.*

which statement was false, and known by him, Lieutenant *H. O. Flipper*, 10th Cavalry, to be false, in that the funds reported by him as in transit, and amounting to three thousand seven hundred and ninety-one dollars and seventy-seven cents (\$3,791.77), were not so in transit, but had been retained by him or applied to his own use or benefit. This at Fort Davis, Texas, on or about the 9th day of July, 1881."

*Specification 3d*—"In this: that 2d Lieutenant *H. O. Flipper*, 10th U. S. Cavalry, being on duty as acting commissary of subsistence at the post of Fort Davis, Texas, did submit for the approval of the post commander, Colonel William R. Shafter, 1st U. S. Infantry, his, Lieutenant *Flipper's*, 'weekly statement of public funds,' in words and figures to wit:

SUBSISTENCE DEPARTMENT U. S. ARMY,  
FORT DAVIS, TEXAS, *July 16th, 1881.*

SIR: I have the honor to report my balance of subsistence funds on deposit and in hand at the close of the week ending Saturday, July 16th, 1881, as follows:

Deposited with the ass't treasurer of the U. S. at ———	..... \$
Deposited with the U. S. designated depository at ———	.....
Deposited with the ——— National Bank at ———	.....
Deposited ———	.....
In transit to chief com's'y subs. Dep't Texas.....	3,791 77
In my personal possession, in office safe.....	289 34
Total amount.....	\$4,081 11

Very respectfully, your obedient servant,  
(Signed) **HENRY O. FLIPPER,**  
*2d Lieut., 10th Regt. of Cavalry, A. C. S.*

To the CHIEF COMMISSARY OF SUBSISTENCE,  
*Headquarters Department of Texas, San Antonio, Texas.*

which statement was false and known by him, Lieutenant *H. O. Flipper*, 10th Cavalry, to be false, in that the funds reported by him as in transit, and amounting to three thousand seven hundred and ninety-one dollars and seventy-seven cents (\$3,791.77), were not so in transit, but had been retained by him or applied to his own use or benefit. This at Fort Davis, Texas, on or about the 16th day of July, 1881."

*Specification 4th*—"In this: that 2d Lieutenant *H. O. Flipper*, 10th U. S. Cavalry, being on duty as acting commissary of subsistence at the post of Fort Davis, Texas, did submit for the approval of the post commander, Colonel William R. Shafter, 1st U. S. Infantry, his, Lieutenant *Flipper's*, 'weekly statement of public funds,' in words and figures to wit:

SUBSISTENCE DEPARTMENT U. S. ARMY,  
FORT DAVIS, TEXAS, July 23d, 1881.

SIR: I have the honor to report my balance of subsistence funds on deposit and in hand at the close of the week ending Saturday, July 23d, 1881, as follows:

Deposited with the ass't treasurer of the U. S. at ———	\$
Deposited with the U. S. designated depository at ———	
Deposited with the ——— National Bank at ———	
Deposited ———	
In transit to ch'f C. S. Dep't Texas, San Antonio, Texas.....	3,791 77
In my personal possession, in office safe.....	479 30
Total amount.....	\$4,271 07

Very respectfully, your obedient servant,  
(Signed) HENRY O. FLIPPER,  
2d Lieut., 10th Regt. Cavalry, A. C. S.

To the CHIEF COMMISSARY OF SUBSISTENCE,  
Headquarters Department of Texas, San Antonio, Texas.

which statement was false and known by him, Lieutenant *H. O. Flipper*, 10th Cavalry, to be false, in that the funds reported by him as in transit, and amounting to three thousand seven hundred and ninety-one dollars and seventy-seven cents (\$3,791.77), were not so in transit, but had been retained by him or applied to his own use or benefit. This at Fort Davis, Texas, on or about the 23d day of July, 1881."

*Specification 5th*—"In this: that 2d Lieutenant *H. O. Flipper*, 10th U. S. Cavalry, being acting commissary of subsistence at the post of Fort Davis, Texas, and in such capacity being required to make a weekly exhibit of the funds in his possession pertaining to the Government to his post commander, did exhibit to his commanding officer, Colonel William R. Shafter, 1st U. S. Infantry, commanding post of Fort Davis, Texas, as part of the aforesaid funds, a check in words and figures as follows:

Designated	No. 9.	SAN ANTONIO, TEXAS, May 20, 1881.
Depository of the		
United States.		San Antonio National Bank

Pay to Lieut. *Henry O. Flipper*, A. C. S., or order, fourteen hundred and forty and  $\frac{43}{100}$  dollars.  
\$1,440.43. HENRY O. FLIPPER,

2d Lieut., 10th Cav'y.

which check was fraudulent and intended to deceive the said commanding officer, as he, Lieutenant *Flipper*, neither had nor never had had personal funds in said bank, and had no

authority to draw said check. This at Fort Davis, Texas, on or about the 2d day of July, 1881."

To which charges and specifications the accused, 2d Lieutenant *Henry O. Flipper*, 10th Cavalry, pleaded "Not guilty."

#### FINDING.

The court, having maturely considered the evidence adduced, finds the accused, 2d Lieutenant *Henry O. Flipper*, 10th Cavalry, as follows :

#### CHARGE I.

Of the <i>Specification</i> ,	"Not guilty."
Of the <i>CHARGE</i> ,	"Not guilty."

#### CHARGE II.

Of the <i>1st Specification</i> ,	"Guilty."
Of the <i>2d Specification</i> ,	"Guilty."
Of the <i>3d Specification</i> ,	"Guilty."
Of the <i>4th Specification</i> ,	"Guilty."
Of the <i>5th Specification</i> ,	"Guilty."
Of the <i>CHARGE</i> ,	"Guilty."

#### SENTENCE.

And the court does therefore sentence him, 2d Lieutenant *Henry O. Flipper*, 10th Cavalry, "*To be dismissed from the service of the United States.*"

---

II. The proceedings, findings, and sentence of the general court-martial in the foregoing case of 2d Lieutenant *Henry O. Flipper*, 10th Cavalry, having been approved by the proper reviewing authority and the record forwarded, in accordance with the provisions of the 106th Article of War, for the action of the President, the following are his orders :

EXECUTIVE MANSION, *June 14, 1882.*

The sentence in the foregoing case of 2d Lieutenant *Henry O. Flipper*, 10th Regiment of U. S. Cavalry, is hereby confirmed.

CHESTER A. ARTHUR.

III. By direction of the Secretary of War the sentence in the case of 2d Lieutenant *Henry O. Flipper*, 10th Cavalry, will take effect June 30, 1882, from which date he will cease to be an officer of the Army.

BY COMMAND OF GENERAL SHERMAN:

R. C. DRUM,  
*Adjutant General.*

OFFICIAL:

*Assistant Adjutant General.*

UNITED STATES OF AMERICA.

WAR DEPARTMENT,  
WASHINGTON CITY, *March 15, 1898.*

I hereby certify that the five pages hereto attached are a true copy of General Court-Martial Orders, No. 39, Headquarters of the Army, Adjutant General's Office, Washington, June 17, 1882, on file in the Adjutant General's Office, War Department.

H. C. CORBIN,  
*Adjutant General.*

Be it known that H. C. Corbin, who signed the foregoing certificate, is the Adjutant General of the Army, and that to his attestation as such full faith and credit are and ought to be given.

In witness whereof I have hereunto  
Seal War Office, set my hand and caused the seal of the  
United States of War Department to be affixed on this  
America. fifteenth day of March, one thousand  
eight hundred and ninety-eight.

G. D. MEIKLEJOHN,  
*Assistant Secretary of War.*

**APPENDIX 3.**

Page 58 of Record.

PETER R. BRADY, a witness called and sworn on behalf of the petitioners, testified as follows:

Direct examination by Mr. HENEY:

Q. Mr. Brady, how old are you? A. I am in my seventieth year.

Q. Where do you live? A. I live now in Florence, in the county of Pinal, Territory of Arizona.

Q. When did you first come to Arizona? A. In April, 1854.

Q. And what part of the Territory did you land in or were you first? A. I was on a railroad survey and come on down pretty much the route of the Southern Pacific railroad as it runs now from Cow Springs by Apache pass.

Q. Did you get into the neighborhood of Calabasas that year? A. We came by there.

Q. What time of the year? A. April.

Q. 1854? A. Yes, sir.

Pages 74, 75, and 76.

PETER R. BRADY recalled for further direct examination.

By Mr. HENEY:

Q. When you first went to Calabasas did you see any sheep on the ranch of Calabasas? A. I did.

Q. About how many? A. Well, I should judge about six thousand head.

Q. Did you at that time witness any fight between the Indians and the people of Calabasas or the soldiers? A. I did.

Q. Will you relate when it was and what took place? A. It was in the month of April, 1854. The exact date I do not recollect. The Apaches had met us on the previous day, or we had overtaken them on the road—on their trail.

We had been following them, and there come up a storm of snow and hail, and they left us alone; didn't bother us much, and said they were on the way down to attack the ranch of Calabasas and take the sheep away from there. Of course, we didn't know the distance at that time, but they told us it was about a half a day's ordinary travel.

Q. You talked with them, did you? A. I talked with them through a captured Mexican; talked with their chief. We saw them first, and they did not attack us. It come on evening, and the snow got a little troublesome to travel in and we had to camp about an hour or two before sunset. A few of the Indians followed us. We could see them at a distance, but they did not annoy us that night, and the next morning we came down to the Sonoita wash, and we suddenly came upon a band of tame Apaches (Mansers), and they run away from us, but we induced them to come back. Some of them had on soldier's overcoats, and we could see right away that they were different from the ones we had seen the day before and had talked with, and the commandante of the presidio from Tucson came up with his company of dragoons, and the first question he asked was if we had seen the Indians. We told him that we had; that there was a large band of them behind us coming on, and that they would be there before long. They then invited us to go to the ranch of Calabasas, and we went a mile or two above, and while we were going the commotion commenced. The Mexican troops were all mounted, and there was a little valley close by, and the herders began to drive the sheep up to shut them up, and about one hundred and eighty Cayotero Apaches come upon them, and the Mexican troops met them at the corner of the buildings, and the Indians were very poorly armed with bows and arrows, and the Mexicans were not much better. All they had was lances and some guns, and they put the Indians to flight immediately and killed a great many of them. It was a regular slaughter. We were invited to remain there several days and recuperate by Mr. Hulseman. We were out of everything, especially flour, and we remained several days with them and got some flour and recuperated there.

Q. What was the condition of the country with reference to the Apaches in 1854 and 1855—first, were the Mexican troops still in possession here in Tucson at that time? A. They were, and remained all that year until December.

Q. Of 1854? A. Of 1854. They never left here until Christmas eve, 1854, when they pulled down the Mexican colors on the plaza and marched out.

Q. Were there any Mexican troops in Tubac at that time? A. None.

Q. Was there any settlement at Tubac at that time? A. None. There was only the one settlement at Calabasas under Hulseman and the three Germans I spoke of at Tumacacori outside of the walled garrison at Tucson; no other Europeans or Mexicans.

Q. In the whole Territory? A. Yes, sir.

Q. What was that due to? A. Apache raids, I suppose. We passed through a great many abandoned ranches on the San Pedro and Babocomori. There was nothing but desolation and ruin.

Q. What was the custom of Apaches with reference to attacking parties in the vicinity of Tucson? A. It was dangerous to go outside of the limits of the town, almost. They killed people within a mile of town here years afterwards. Property or life was not safe anywhere outside of the walled garrison of Tucson.

#### APPENDIX 4.

Pages 204, 205, 206.

Cross-examination by Mr. HENEY:

Q. Mr. Flipper, do you own any interest in the lands that are in conflict here or do you claim any interest? A. I do not own any interest, but I attempted to file on one hundred and sixty acres at Calabasas, and it was rejected.

Q. Do you not still claim and didn't you publish notice to the world that you claimed one hundred and sixty acres of the best land in this Calabasas grant? A. I published notice that I filed and that the filing was rejected, and that the decision had been appealed from.

Q. And notifying everybody to keep off of it? A. Nothing of that kind; no, sir. I will tell you what the notice was if you wish.

Q. Well, what was it? A. A man jumped the tract of land and was living on there, and he died or was killed and



his administrator attempted to sell it, and I notified people not to buy it; that I claimed it.

Q. And you still claim that interest? A. I do.

Q. That is one hundred sixty acres? A. Even; yes, sir.

Q. That is as good a piece of land as there is within the Guebabi grant, as claimed here? A. It is not on the Guebabi; it is on the Tumacacori.

Q. Well, that is as good a piece as there is on the Tumacacori? A. No, sir; I do not think it is. It is not as good a piece of land as some others, because of the difficulty to get water on it; but it is a good piece of land. There is no question about that.

Q. Best as you could get a-hold of? A. The rest had been taken; yes, sir.

Q. You are further interested in it, having been employed by the squatters to examine this grant and report upon it before you were ever employed by the Government? A. I was not employed by the squatters and never received a cent from them for doing anything.

Q. Did you make an examination of this grant from any purpose prior to being employed by the Government? A. I translated the expediente or testimonio of title at the request of Judge Le Barnes and furnished him some information as to it.

Q. Did you make a full report on it? A. I did not.

Q. At that time did you go to the different places called for in the expediente and make an examination? A. Of the grant on the ground?

Q. Yes, sir. A. I did not, sir.

Q. On the ground? A. I did not sir. The first I ever went to the different calls—I will give you the date exactly—it was February 19th, 1894.

Q. At the time you saw these other monuments you speak of, at an earlier date than that, how did you know they were the monuments of the Tumacacori or Guebabi claims? A. I didn't say that I saw any of the monuments prior to this time except the one above the Cienega Grande. That was shown to me by Mr. Charles Altschul, who claimed a tract of land which he said was between the Calabasas and Nogales, and he took me out there and showed me that monument and told me it was the monument of the Calabasas grant. At that time I knew nothing whatever of the Calabasas grant.

Q. Have you read the title papers of the Nogales grant?

A. I have.

Q. Don't they state that there is about a thousand feet between the north monument of that grant and the south monument of the Calabasas grant? A. One thousand steps, it says. At that time I had seen none of the papers in either case—that is, of either grant.

Q. (Exhibiting a paper.) Examine that and state whether that is a copy of your report made to Judge Le Barnes upon his grant, or whether that is the original of that report.

A. I think it is; yes, sir.

Q. Examine the signature at the end of it and the affidavit. A. Yes, sir.

Q. You have sworn to it as correct, haven't you, on the back page? A. I have sworn to the correctness of the translation.

Q. And that you then knew all the laws of Mexico relating to the subject; doesn't it go on and say that? A. No, sir.

Q. What does it say? A. (Reading:) "That the foregoing translation, carefully and scrupulously made by him, is a true and correct translation of what purports to be the original title or patent of what is now known as the 'Tumacacori and Calabasas private land claims,' situated in the Tucson land district, Pima county, Territory of Arizona. Depo-  
nent further declares that his true full name is Henry Ossian Flipper; that he was educated partly at Atlanta University, Atlanta, Georgia, and partly at the United States Military Academy, West Point, New York, at which latter institution he was graduated and granted a diploma; that he learned the Spanish language at said military academy, beginning the study thereof in September, 1874; that he has been engaged continuously for the past six years on the survey of public and private lands in the Republic of Mexico; that during that time he has examined nearly two thousand Spanish and Mexican land titles, ranging in dates from October, 1665 (title of Turicachi, district of Arispe, State of Sonora), up to 1889; that he is conversant with the methods of survey and forms of titles in use in that country as well—with all the laws in force under both the Spanish and Mexican regimes—and that he believes himself thoroughly competent to translate and pass on any

Spanish or Mexican land title that may be presented to him. And further deponent saith not." I endorse that now.

Q. Had you examined two thousand titles in those ten years? A. I should judge about that many, sir.

Pages 226 and 227.

Recross-examination of HENRY O. FLIPPER by Mr. HENEY:

Q. Wasn't this (Flipper's report) gotten up for the purpose of defeating this grant? Wasn't Judge Le Barnes employed by the squatters on the grant, and was not the object and purpose of the report to show how the grant could be defeated? A. At that time the settlers on the grant had employed a lawyer in Washington, I think Le Barnes, to see if he could get the reservation lifted off this grant, and it was made for that purpose.

Q. And this report to Judge Le Barnes, did not you give it as your opinion to him that the grant of 1807 was genuine, and the only way you could defeat this grant claim was by showing indefiniteness in the boundaries? A. I have no doubt in the world now that the title of 1807 was genuine.

Q. And wasn't that the language of this report—making the boundaries indefinite? A. I believe they are indefinite yet.

Q. Wasn't that what you said in this report? A. I haven't read it since 1890, but if I said it then I say it now.

Q. (I will read a portion of it:) "It will be difficult to establish the fraudulent character of this transfer, and it will be necessary to depend on the indefiniteness of the description of the survey and the consequent impossibility of locating the grant on the earth's surface." A. I undoubtedly said that then, and I say that now.

Q. And didn't you further say in your report, "I am of the opinion that the title is genuine, notwithstanding it is obscure, indefinite, and defective, and I arrive at this conclusion the more readily because I know that all or nearly all of the titles issued by the Spanish authorities which I have examined are equally obscure, indefinite, and defective?" A. I endorse the same thing now. The title of 1807 is undoubtedly genuine.

## Pages 212 and 213.

Q. In examining these title papers, Mr. Flipper, in grants in Mexico which you examined, did any of them purport to be Spanish grants—grants made by Spain? A. Yes, sir; the larger part of them, I should say.

Q. In your examination of those papers did not you find that the large majority of them were fully as obscure, indefinite, and uncertain as the titulo in evidence here of 1807 in regard to boundaries? A. I would hardly say a majority, but a large proportion of them were.

Q. In making a survey of any of these grants could you and would you find the monuments by taking the courses and distances as given in the titulo? A. In some few cases.

## Page 217.

Q. Did you find that the monuments compared at all with the courses and distances called for in the title papers? A. In the revised surveys we did.

Q. When the courses and distances given were in the revised surveys, but not those in the original title papers? A. Rarely—very, very rarely.

IN THE  
**Supreme Court of the United States.**

**OCTOBER TERM, 1897.**

---

ROBERT PERRIN, APPELLANT,

*vs.*

THE UNITED STATES, APPELLEE.

---

*No. 30.*

---

**Additional Parts of the Record in this Cause which  
are brought into it by a Stipulation of the Attorneys  
of the Respective Parties to which said Papers are  
Appended.**

---

Copy of the record and proceedings had in the measurement of eight *sitios para cria de ganado mayor y caballada* (live-stock ranch) in the localities called "San Ygnacio del Bavocómari" in behalf of the citizen Ygnacio Elias and Doña Eulalia Elias.

{ Seal of the Treasury General of the }  
{ State of Sonora, Feb. 8, 1898. }

A fifty-cent stamp, duly cancelled. Citizen Treasurer General: Ygnacio Bonillas, a resident of Nogales, and temporarily in this capital, appears before you and states: That, as appears by the letter, the original of which I hereto annex, of Mr. Robert Perrin, owner of the land known as

"San Ygnacio del Bavocómari," situate in the territory of Arizona, United States of the North, needs a certified copy of the record relating to said land existing in the archives of the Treasury under your worthy charge; and the said Mr. Perrin having authorized me to solicit the said copy in his name, I pray you to be pleased to order that the said exemplified copy issue to me for the purposes that may suit the interested party. I make all necessary protestations. Hermosillo, February 5, 1898. Ygnacio Bonillas. Received on the seventh instant, and let the copy requested issue as prayed. V. Aguilar. (A sign manual.)

Stamp, 3rd class. 2 reales. Years 1822 and 1823. Qualified. The Constitution sworn to by the King on March 9, 1820. Qualified by the State of the West for the years 1827 and 1828. A stamp which reads: "Qualified by the Mexican Republic for the years 1824 and 1825."

Mr. Treasurer General: Don Ygnacio Elias and Doña Eulalia Elias, before Y. H. appear in due form and say: That needing land for suburban property, they, in company with Don Rafael Elias, Captain Don Ygnacio Elias and Don Nepomuceno Felix, denounce the public land bordering on the San Pedro ranch, within the limits of Santa Cruz, as far as the point of Tres Alamos, binding ourselves to pay to the Nation the corresponding fees and to perform all else that justice may require until we acquire title through grant and confirmation, to which end you will be pleased to hold the said public land as recorded and denounced. Wherefore we pray you to order that what we petition be done, thereby granting us grace. Arispe, March 12, 1827. By consent and at the request of Don Ygno. Elias. Joaquin Elias. (A sign manual.) Eulalia Elias. (A sign manual.)

Cosala, July 1, 1827.—The chief of police of Santa Cruz, by authority thereunto conferred upon him, without prejudice to third parties representing better rights, will proceed after citation of the abutting owners, to the measurement, valuation and crying for thirty consecutive days, of the lands mentioned in the foregoing denouncement, following in all things the sovereign decree No. 30 of the Honorable Constitutional Congress of the State, of May 20, 1825, and the regulations accompanying the same; and after having carried out these proceedings, he will make return of the same to this Treasury, notifying the bidders that may present themselves to appear in person or by attorney at the auction

which must be held in the said office after the customary three public auctions. The Treasurer General of the State, Nicolas Ma. Gaxiola, so decreed and signed. Gaxiola. (A sign manual.)

In the presidio of Santa Cruz, on the fifth day of the month of October of eighteen hundred and twenty-eight. Pursuant to the foregoing decree of the Treasurer General, let the provisions of the said decree dated July 1, 1827, be executed, and to that end, after summoning the interested parties, abutting owners, expert surveyor, and other necessary officials which must be named, and calling for me, go to the hacienda of San Pedro for the purpose of proceeding with the measurement of the *sitios* desired by the parties in interest. The citizen Alejandro Franco, constitutional alcalde of the presidio of Santa Cruz, by this decree so ordered and signed, with the assistants commissioned to act with him in default of a notary, according to law. For Alejandro Franco, Ramón Romero. Assistant, Ramón Romero. Assistant, Franco. Gauna.

At the hacienda of San Pedro, on the eighteenth day of the month of October of eighteen hundred and twenty-eight, I, the said judge, there being present the citizen Ygnacio Elias, for himself and as attorney for his sister, Doña Eulalia; the abutting owners, citizen Captain Ygnacio Elias and Nepomuceno Felix; the expert surveyor, citizen José Maria Caballero, Lieutenant Colonel of Engineers; whom I notified, and to whom I made known the foregoing decree, and who stated that they understood the same and acknowledged service of the summons and appointments; designated the twentieth day of the same month as the time to proceed to the measurement; and they signed with me and my assistants in the usual form. For Alejandro Franco, Ramón Romero. (A sign manual.) Ygno. Elias. (A sign manual.) Juan Nepomuceno Felix. (A sign manual.) José de Caballero. (A sign manual.) Assistant, Ramón Romero. (A sign manual.) Assistant, Franco. Gauna. (A sign manual.)

Having arrived at the place named, San Ygnacio del Bavocómari, on the twentieth day of the same month and year, the point where the surveys of the citizens Captain Ygno. Elias Gonzales and Nepomuceno Felix end—in a direction east-northwest by west-southwest—accompanied by the party in interest, the expert surveyor, the officials which must be named and assistants, I ordered that before begin-

ning the survey a reconnoissance or visual inspection be made of the land to be surveyed on the petition of the citizen Ygnacio Elias and his principal, Doña Eulalia. And after inspecting it thoroughly, I found it to be ample for the raising of live stock, the greater part having water flowing from permanent springs; but also having the one drawback of being dangerous as it furnishes hiding places for the Apache enemy. And in order that it may appear of record, I make it a part hereof, which I signed with my assistants who act with me. For Alejandro Franco, Ramón Romero. (A sign manual.) Ygno. Elias. (A sign manual.) Juan Nepomuceno Felix. (A sign manual.) Ygno. Elias Gonzales. (A sign manual.) José de Caballero. (A sign manual.) Assistant, Ramón Romero. (A sign manual.) Assistant, Franco. Gauna. (A sign manual.)

On the same day, month and year, I, the judge commissioned to proceed to the survey of the land denounced, on a bald hill, in front of the small marsh of San Ygnacio del Bavocómari, appointed the citizen Lorenzo Sortillon as counter; the citizens Andres Mendoza and Pablo Elias as chainmen; the citizens Antonio Campoy and Mauricio Neiva as rodmen; and together with the expert surveyor, citizen Lieutenant Colonel José Ma. Caballero, they accepting the said appointments, and each taking the customary oath in proper form to faithfully and lawfully discharge the duty assigned to each one, without fraud or deception, and to each act according to his best knowledge and understanding, and those who could signed with me and my assistants in the ordinary form, to which I certify. For Alejandro Franco, Ramón Romero. (A sign manual.) Lorenzo Sortillon. (A sign manual.) Pablo Elias. (A sign manual.) For Andres Montoya, Antonio Campoy and Mauricio Neiva, Francisco Gauna. (A sign manual.) Assistant, Ramón Romero. Assistant, Francisco Gauna. (A sign manual.)

On the same spot, and on the day, month and year, there being present the parties interested, officials and assistants named, in order to proceed to the survey, I ordered that a cord of fifty varas be measured, and tying its ends to two poles, the said survey was commenced by the expert surveyor citizen José M. Caballero, who, placing his compass, took the angle: East-northeast one-quarter east by west-southwest one-quarter west, where I caused a monument in the shape of a cross to be placed. From that point, in the said direc-



tion, one hundred cords were measured and counted, terminating at a little valley near some bald hills where I caused a monument to be set. And as it was late, I had the cord taken in and the officials and others withdraw to rest until the following day when the survey would continue; which I record and sign with my assistants and the others interested who accompanied me, to which I certify. For Alejandro Franco, Ramón Romero. (A sign manual.) Ygnacio Elias. (A sign manual.) Juan Nepomuceno Felix. (A sign manual.) Ygno. Elias Gonzales. (A sign manual.) Lorenzo Sortillon. (A sign manual.) For Anto. Campoy and Mauricio Neiva, Francisco Gauna. (A sign manual.) For Andres Montoya and myself, Pablo Elias. (A sign manual.) Assistant, Ramón Romero. Assistant, Francisco Gauna. (A sign manual)

On the spot where I ordered the second monument to be placed, called the valley of San Ygnacio del Bavocómari, accompanied by the party in interest, expert surveyor, officials appointed, and in order to continue the survey in the same direction, on the twenty first of the said month and year, I caused the customary fifty-vara cord to be remeasured; which done, its extremities were tied to two poles, and the cord being extended there were measured and counted in the same direction two hundred and forty-three cords, ending on the top of a hill facing south-southwest, where the survey was brought to a close owing to the broken condition of the ground and the many and deep gulleys lying in the direction of the course. By reason of this it became necessary for me and the expert surveyor to calculate the fifty-seven cords wanting to complete the side of the three *sitios para ganado mayor* (live-stock ranch), this calculation ending at the warm spring facing the Santa Rita range, at the foot of a bald hill, where I ordered a corner monument set, which faces the slope of the said range and warm spring. And from the said point, as the broken surface and deep gorges continue, in order to form the head line of these *sitios*, I and the expert surveyor, at right angles to the line mentioned, calculated in a direction northwest one-quarter north-northwest by southeast one-quarter south-southwest, seventy cords, to the base of a small poplar tree, which grows in a vale at the foot of the said Santa Rita range. And to complete the head line or square in an opposite direction—south-southwest one-quarter south-

east by north-northwest one-quarter northwest—the other forty cords were calculated, terminating at a hill where several oaks were growing, where I ordered the corresponding monuments to be placed. With these three *sitios para ganado mayor* (live-stock ranch) and the survey of the previous day four *sitios* were completed; and as it was past midday, I ordered that we withdraw to the central monument; which we did. Having reached the said monument in front of the San Ygnacio del Bavocómari marsh; the fifty-vara cord having been again examined, and its extremities having been tied to the two poles aforesaid, and the cord extended in a direction west-southeast by east-northwest, there were measured and counted seventy-four cords, which terminated on the top of some hills in the vicinity of the water point, where, night having fallen, the survey for this day was finished, all retiring to rest. Which I record, signing it with the party in interest, expert surveyor, officials named and assistants, to which I certify. For Alejandro Franco, Ramón Romero. (A sign manual.) Ygno. Elias. (A sign manual.) Juan Nepomuceno Felix. (A sign manual.) Lorenzo Sortillon. For Andres Montoya and for myself, Pablo Elias. (A sign manual.) For Antonio Campoy and Mauricio Neiva, Franco. Gauna. (A sign manual.) Ygno. Elias Gonzales. (A sign manual.) José de Caballero. (A sign manual.) Assistant, Ramón Romero. Assistant, Francisco Gauna. (Sign manual.)

At the place aforesaid, on the twenty-second day of the said month and year, I, the judge commissioned, the party interested, expert surveyor, and other officials appointed, having caused the fifty-vara cord to be examined, as also the course of the previous day, the cord being extended in this same direction, twenty-six cords were measured and counted, so as to complete one hundred cords for the side of one *sitio de ganado mayor*, and in the same direction, passing the cord over several hills and gulleys, three hundred cords were measured and counted, the latter crossing a valley in the vicinity of the spring-fed pools, and terminating above the said pools at a rocky hill where I ordered a corner monument to be placed, thus completing the side of the other four *sitios para ganado mayor*. The compass being placed here by the expert surveyor, and the cord being placed so as to form a right angle (or ninety degrees) with the former line; the cord having

been examined and extended in a direction south-southwest one-quarter southeast by north-northwest one-quarter northwest, forty cords were measured and counted, corresponding to those of the head line of the other four *sitios*, and terminating on top of some bald hills, where I ordered a corner monument placed, and returning to the center of this head line in an opposite direction—north-northwest one-quarter northwest by south-southwest one-quarter southeast—sixty cords were measured and counted to complete the one hundred cords, the latter ending on top of a very high hill. This finished the survey of the eight *sitios para ganado mayor* recorded by the citizen Ygnacio Elias and his sister Doña Eulalia. He acknowledged that he was satisfied with the said measurements, and advised that he would opportunely designate its bounds with monuments of mortar and stone, as is provided. And that it may so appear he signed with me and those who knew how, together with the assistants acting with me, through want of a notary, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Ygno. Elias. (A sign manual.) Lorenzo Sortillon. (A sign manual.) For Andres Montoya and for myself, Pablo Elias. (A sign manual.) Juan Nepomuceno Felix. (A sign manual.) For Anto. Campoy and Mauricio Neiva, Francisco Gauna. (A sign manual.) Ygno. Elias Gonzales. (A sign manual.) José de Caballero. (A sign manual.) Assistant, Ramón Romero, Assistant, Franco. Gauna. (A sign manual.)

At the hacienda of San Pedro, on the twenty-fourth day of October of eighteen hundred and twenty-eight, I, the judge commissioned to proceed to the appraisalment and valuation of the lands surveyed in behalf of the said citizen Ygnacio Elias and his sister Doña Eulalia, the two comprising eight *sitios para ganado mayor*, have seen fit to appoint as appraisers, knowing that they possess the necessary knowledge, the citizens Pablo Elias and Ramón Romero, residents of the presidio of Santa Cruz, and who were present at the survey; who having been apprised of the said appointment, accepted the same, and each made oath in due form, promising to make the appraisalment without any fraud, deception or concealment whatsoever; and pursuant thereto they stated, in conformity and accordance with the reconnoissance they have made and informed of the orders governing the subject, that they ought to set and do set the value of

sixty pesos for each of the six *sitios de ganado mayor*, as they have a permanent water supply, and for the two remaining to complete the eight *sitios de ganado mayor*, ten pesos each, as they are absolutely bereft of water; which gives the eight *sitios de ganado mayor* a total value of three hundred and eighty pesos; and having read this declaration to the appraisers, they ratified and signed the same with me and my assistants, with whom I act through commission, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Pablo Elias. (A sign manual.) Ramón Romero. (A sign manual.) Assistant, Ramón Romero. Assistant, Franco. Gauna. (A sign manual.)

In the presidio of Santa Cruz, on the twenty-ninth of the said month and year, I, the judge commissioned, having returned to this presidio and pursuant to the foregoing proceedings and appraisal of the lands mentioned in behalf of the citizen Ygnacio Elias and his sister Doña Eulalia, comprising eight *sitios de ganado mayor y menor*, ordered that they be cried for thirty consecutive days reckoned from tomorrow, pursuant to the provisions of law. The judge commissioned so ordered and signed with the assistants, to which I certify. For Alejandro Franco, Ramón Romero. (A sign manual.) Assistant, Ramón Romero. (A sign manual.) Assistant, Franco. Gauna. (A sign manual.)

First cry. At the same place, on the thirtieth day of the month of October of the said year, I, the said judge of the said presidio, caused several persons to assemble in the public plaza of the said presidio, by sounding the drum, and in the presence of all of them the crier, Gregorio Gallegos, announced in a high and clear voice: "The lands of the place named San Ygnacio del Bavocómari, situate in this jurisdiction and comprising eight *sitios de cria de ganado mayor y menor*, in behalf of the citizen Ygnacio Elias and his sister Doña Eulalia appraised in the sum of three hundred and eighty pesos, are for sale per account of the nation. Whoever wishes to made a bid, whatever bid he makes passing before me will be accepted." And no bidder having appeared, a record was made which I signed with my assistants according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Assistant, Ramón Romero. (A sign manual.) Assistant, Franco. Gauna. (A sign manual.)

Second cry. In the same presidio, on the thirty-first day

of the said month and year, a publication by crier similar in every way to the foregoing was made, and no bidders appearing I recorded the fact, which I signed with the assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Assistant, Ramón Romero. (A sign manual.) Assistant, Francisco Gauna. (A sign manual.)

Third cry. In the said presidio, on the first day of November of eighteen hundred and twenty-eight another publication was made, and no bidders having appeared, a record was made which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Assistant, Ramón Romero. (A sign manual.) Assistant, Franco. Gauna. (A sign manual.)

Fourth cry. In the said presidio, on the second day said month and year, another publication was made, and no bidder appearing this record was made, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Assistant, Ramón Romero. (A sign manual.) Assistant, Franco. Gauna. (A sign manual.)

Fifth cry. In the said presidio, on the third day of the said month and year, another publication was made, and no bidder appearing the fact was recorded, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Assistant, Ramón Romero. (A sign manual.) Assistant, Franco. Gauna. (A sign manual.)

Sixth cry. In the said presidio, on the fourth day of the said month and year, another publication was made, and no bidder appearing, I made this record, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Seventh cry. In the said presidio, on the fifth day of the said month and year, another publication was made, and no bidder appearing, a record was made which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Eighth cry. In the said presidio, on the sixth day of the said month and year, another publication was made, and no bidder appearing, a record was made, which I signed with

my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Ninth cry. In the said presidio, on the seventh day of the said month and year, another publication was made, and no bidder appearing, a record was made, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Tenth cry. In the presidio aforesaid, on the eighth day of the current month and year, another publication was made, and no bidder appearing, the fact was recorded, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Eleventh cry. In the presidio aforesaid, on the ninth day of the said month and year, another publication was made, and no bidder appearing, a record was made, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Twelfth cry. In the said presidio, on the tenth day of the said month and year, another publication was made, and no bidder resulting, a record was made, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Thirteenth cry. In the said presidio, on the eleventh day of the said month and year, another publication was made and no bidder resulting a record was made, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Fourteenth cry. In the said presidio, on the twelfth day of the said month and year, another publication was made, and no bidder appearing, a record was made, which I signed with my assisting witnesses. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Asst., Franco. Gauna. (A sign manual.)

Fifteenth cry. In the presidio aforesaid, on the thirteenth

day of the said month and year, another publication was made, and there being no bidder, a record was made, which I signed with the assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. (A sign manual.) Francisco Gauna. (A sign manual.)

Sixteenth cry. In the said presidio, on the fourteenth day of the said month and year, another publication was made, and no bidder appearing, a record was made, which I signed with the assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Franco. Gauna. (Sign manuals.)

Seventeenth cry. In the said presidio, on the fifteenth day of the said month and year, another publication was made, and no bidder appearing, a record was made, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Franco. Gauna. (Sign manuals.)

Eighteenth cry. In the presidio aforesaid, on the sixteenth day of the said month and year, another publication was made, and no bidder resulting, the fact was recorded, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Franco. Gauna. (Sign manuals.)

Nineteenth cry. In the said presidio, on the seventeenth day of the said month and year, another publication was made, and no bidder resulting, the fact was recorded, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Francisco Gauna. (Sign manuals.)

Twentieth cry. In the said presidio, on the eighteenth day of the said month and year, another publication was made, and no bidder resulting, the fact was recorded, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Francisco Gauna. (Sign manuals.)

Twenty-first cry. In the presidio aforesaid, on the nineteenth day of the said month and year, another publication was made, and no bidder resulting, a record was made, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Franco. Gauna. (Sign manuals.)

Twenty-second cry. In the said presidio, on the twentieth

day of the said month and year, another publication was made, and no bidder appearing, a record was made, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Francisco Gauna. (Sign manuals.)

Twenty-third cry. In the said presidio, on the twenty-first day of the said month and year, another publication was made, and there being no bidder, a record was made, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Francisco Gauna. (Sign manuals.)

Twenty-fourth cry. In the said presidio, on the twenty-second day of the said month and year, another publication was made, and no bidder resulting, a record was made, which I signed with the assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Francisco Gauna. (Sign manuals.)

Twenty-fifth cry. In the said presidio, on the twenty-third day of the said month and year, another publication was made, and no bidder appearing, a record was made, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Franco. Gauna. (Sign manuals.)

Twenty-sixth cry. In the presidio aforesaid, on the twenty-fourth day of the said month and year, another publication was made, and no bidder resulting, the fact was recorded, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Francisco Gauna. (Sign manuals.)

Twenty-seventh —. In the said presidio, on the twenty-fifth day of the said month and year, another publication was made, and no bidder appearing, the fact was recorded, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Francisco Gauna. (Sign manuals.)

Twenty-eighth cry. In the said presidio, on the twenty-sixth day of the said month and year, another publication was made, and there being no bidder, the fact was recorded, which I signed with my assistants, according to law. For Alejandro Franco, Ramón Romero. Asst., Ramón Romero. Asst., Francisco Gauna. (Sign manuals.)

Twenty-ninth cry. In the said presidio, on the twenty-seventh of the said month and year, another publication was



made, and no bidder resulting, the fact was recorded, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Franco. Gauna. (Sign manuals.)

Thirtieth cry. In the presidio aforesaid, on the twenty-eighth day of the said month and year, the last cry was made, and no bidder resulting, the record thereof was made, which I signed with my assistants. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Franco. Gauna. (Sign manuals.)

In the said presidio, on the said day, month and year, this return being concluded, let it be transmitted to the Treasurer General, issuing summons to the party in interest in order that, either in person or by attorney, he may go to the capital, Alamos, to be present at the three auctions of the lands cried, which are to be held in the said capital. I, the said commissioned judge, so ordered, decreed and signed, together with my assistants, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Asst., Ramón Romero. Asst., Franco. Gauna. (Sign manuals.)

Immediately, on the said day, month and year, the citizen Ygnacio Elias being present, for himself and as attorney for his sister, Doña Eulalia, I notified him and made known to him the foregoing decree, and acknowledging service thereof, he signed with me and my assistants, with whom I act by default of a notary, according to law. For Alejandro Franco, Ramón Romero. (A sign manual.) Ygnacio Elias. (A sign manual.) Asst., Ramón Romero. Asst., Franco Gauna. (Sign manuals.)

NOTE.—This record was transmitted together with an official letter, dated November 30, 1828, to the Treasurer General of the State, and that it may so appear, I sign. Franco. (A sign manual.)

Alamos, December 19, 1828.—Refer it to the Comptroller of the Treasury of the State for opinion. Gaxiola. (A sign manual.)

Citizen Treasurer General: This record contains the survey of eight *sitios* of land for the raising of live stock, made by the alcalde of Santa Cruz in the localities known as San Ygnacio del Bavocómari. I see no objection to adjudicating the land to the claimants, unless the extent thereof exceeds that which may be granted by article 21 of the decree of May 20, 1825; but if you are secured as required

by the provisions of article 22, I am of the opinion that they should be adjudicated in favor of the petitioners, unless a higher bidder shall appear. Alamos, December 20, 1828. Felipe Gil. (A sign manual.)

Alamos, December 22, 1828.—Agreeing with the foregoing opinion of the Comptroller, I ought to and do hereby order that the members of the Board of Auction be assembled in order to hold the last three auctions and sell the land referred to in this record. Gaxiola. (A sign manual.)

First auction. In the city of Concepción de Alamos, on the twenty-second day of the month of December of eighteen hundred and twenty-eight, the president and members composing the Board of Auction being met for the purpose of holding the first auction of the lands to which this record refers, they resolved that by sounding the drum some citizens should be assembled in the office of this Treasury, and that in their presence the party acting as crier, Marcelo Parra, should proceed to cry out, as in fact he did, in a high and clear voice, saying: "The lands in the locality called San Ygnacio del Bavocómari, situate in the jurisdiction of the presidio de Santa Cruz, comprising eight *sitios* for the raising of live stock, surveyed in behalf of Don Ygnacio and Doña Eulalia Elias, and valued at three hundred and eighty *pesos*, are to be auctioned off. Whoever desires to make a higher bid, let him appear before this Board where his bid will be accepted." And no person whatever having appeared, the fact is herein recorded. Gaxiola. (A sign manual.) Almada. (A sign manual.) Gil. (A sign manual.)

Second auction. In the said city, on the twenty-third day of the month of December of eighteen hundred and twenty-eight, there being assembled in meeting the president and members composing the Board, for the purpose of holding the second public sale of the lands referred to in this record, they ordered that it be done in the same manner as the foregoing, which was done; the party acting as crier adding only that on tomorrow the final adjudication would be made. And no bidder appearing, the fact is herein made a matter of record, and this is signed by the members of the Board. Gaxiola. (A sign manual.) Almada. (A sign manual.) Gil. (A sign manual.)

Third auction. In the said city of Concepción, on the twenty-fourth day of the said month and year, the president and members of the said Board of Auction, in meeting

assembled, resolved that the third and last auction and final adjudication of the lands mentioned in this record should be proceeded with; which was done in the same manner as at the two former auctions, the crier adding only that the adjudication was to be made at the moment. And the noon-day prayer bell having been rung for this day, without any bidder appearing, the crier announced finally in a loud voice: "One, two, three. Going, going, going. Good, good, good, may it do Don Ygnacio and Doña Eulalia Elias. In this manner were these proceedings ended; the eight *sitios* of land for the raising of live stock, in the locality known as San Ygnacio del Bavocómari, in the jurisdiction of the presidio of Santa Cruz, being publicly and solemnly sold and adjudicated to the said interested parties in the sum of three hundred and eighty *pesos*, in which amount they were appraised. And in order that it may so duly appear this record was made and signed by the president and members of the Board, together with the citizen Captain Ygnacio Elias, as attorney-in-fact of the interested parties. Gaxiola. (A sign manual.) Almada. (A sign manual.) Gil. (A sign manual.) Ygnacio Elias Gonzales. (A sign manual.)

Arispe, October 19, 1832.—The full sum of three hundred and eighty *pesos*, in which amount the eight *sitios* of land included in the locality known as San Ygnacio del Bavocómari, in behalf of the citizen Ygnacio Elias and Doña Eulalia Elias, the former a resident of the town of Rayon, and the latter a resident of this capital, having been paid into the Treasury General of the United States, as is evidenced by the certificate annexed to the record, let the title through grant issue in due form for their protection. The Treasurer General of the State of Sonora so resolved and signed with assisting witnesses, according to law. Mendoza. (A sign manual.) Asst., Mariano Romo. (A sign manual.) Asst., Luis Carranco. (A sign manual.)

On December 25, 1832, a title through grant was issued for the Bavocómari land to which this record relates. Mendoza. (A sign manual.)

Nicolas Maria Gaxiola, Treasurer General of the Revenues of the State of the West, certifies: that at folio 3, reverse, of the manual of this Treasury, for the current year, under this date, the following entry appears: Charged to land grants, three hundred and eighty *pesos* paid by Captain Don Ygnacio Elias, on account of Don Ygnacio and Doña Eulalia Elias,

residents of Arispe, for eight *sitios* of land for the raising of live stock, in the locality called San Ygnacio del Bavacómari, in the jurisdiction of the presidio of Santa Cruz, appraised in the said amount, which were adjudicated to them without opposition in the Board of Auction at a meeting held in this Treasury on December 24th last. \$380.00. Gaxiola. (A sign manual.) Ygnacio Elias Gonzales. (A sign manual.)

And in order that it may so appear I issue these presents in Alamos, on the eighth of January of eighteen hundred and twenty-nine. Nicolas Maria Gaxiola. (A sign manual.)

Crossed out: "C," not valid. Inserted: "Lorenzo Sortillon, Juan Nepomuceno Felix," valid.

It is an exact copy of its original which I authenticate and sign in Hermosillo, on February eight of eighteen hundred and ninety-eight.

N. AGUILAR.

Copia del expediente y diligencias practicadas en la medida de ocho sitios para cria de ganado mayor y caballada en los parages nombrados "San Ygnacio del Bavocómari" á favor del C<sup>o</sup> Ygnacio Elias y Doña Eulalia Elias.

(Tesoreria General, Estado de Sonora, Feb. 8, 1898.)

Una estampilla de cincuenta centavos debidamente cancelada. C<sup>o</sup> Tesorero General—Ygnacio Bonillas, vecino de Nogales, y accidentalmente en esta Capital, ante Ud comparezco y expongo: Que como consta por la carta que original acompaño, el Sr. Robert Perrin, dueño del terreno de nominado "San Ygnacio de Babocómari, situado en el Territorio de Arizona, Estado Unidos del Norte, necesita una cópia certificada del expediente relativo á dicho terreno que existe en los archivos de la Tesoreria de su digno cárgo, y habiendome autorizado dicho Sr. Perrin para que á su nombre solicite la cópia referida, á Ud suplico se sirva disponer se me expida el testimonio correspondiente para los usos que al interesado convengan. Protesto lo necesario. Hermosillo, Febrero 5 de 1898. Ygnacio Bonillas. Recibido en siete del corriente, y como se solicita, expidase la cópia que se pide. V. Aguilar. Rubrica. Sello 3°. 2 reales. Años de 1822 y 1823. Habilitado. Jurada por el Rey la Constitución en 9 de Marzo de 1820. Habilitado por el Estado de Occidente para los años de 1827 y '28. Un sello que dice: "Habilitado por la República Mexicana para los años de 1824 y '25. Señor Tesorero General: Don Ygnacio Elias y Doña Eulalia Elias, ante V. S., se presentan en debida forma y dicen: que necesitando terreno para bienes de campo, denuncian en consorcio de Don Rafael Elias, el Capitan Don Ygnacio Elias, y Don Nepomuceno Felix, el baldio que linda con el rancho de San Pedro, en la comprensión de Santa Cruz, hasta el punto de Tres Alamos, obligándonos á satisfacer á la nacion los derechos que le correspondan con lo demas que fuere de justicia, hasta adquirir el titulo de merced y confirmacion, para cuyo efecto se ha de servir Ud haber por registrado y denunciado dicho terreno baldio, por tanto. A Ud suplicamos se sirva mandar proveer como solicitamos en lo que recibiremos merced. Arispe, 12 de marzo de 1827. Por auuencia y ruego de Don Ygn<sup>o</sup> Elias. Joaquin Elias.

Rubrica. Eulalia Elias. Rubrica. Cosala 1 de julio de 1827. El alcalde de policia de Santa Cruz, procederá con facultad que para ello se le confiere, sin perjuicio de tercero que mejor derecho represente y previa citación de los colindantes a las medidas avaluos y pregones por treinta dias consecutivos de las tierras que expresa el anterior denuncia, sujetándose en todo al soberano decreto del Honorable Congreso Constituyente del Estado, No. 30 de 20 de Mayo de 1825 y al reglamento que le acompaña, y evacuadas que sean dichas diligencias, las remitirá á esta Tesoreria, citando á los postores que resulten para que ocurran por sí ó por apoderados al remate que debe celebrarse en dicha oficina, previas las tres públicas almonedas de estilo. El Tesorero Gral del Estado, Nicolas M<sup>a</sup> Gaxiola, así lo decretó y firmó. Gaxiola. Rubrica. En el presidio de Santa Cruz, y á los cinco dias del mes de Octubre de mil ocho cientos ventiocho. En vista del antecedente decreto del Sr. Tesorero Gral, cúmplase lo mandado del citado decreto fecha 1<sup>o</sup> de julio de 1827; y al efecto, con citación de los interesados, colindantes, perito agrimensor y demas oficiales necesarios que se deberán nombrar, pásese por mí a la Hacienda de San Pedro, con el fin de que se proceda á la mensura de los sitios que los interesados desean. El C<sup>o</sup> Alejandro Franco, alcalde constitucional del Presidio de Santa Cruz, por éste auto, así lo determinó y firmó, con testigos de asistencia con quienes actúa por receptoria por falta de escribano segun derecho. Por Alejandro Franco, Ramon Romero. Asistencia—Ramon Romero. Asistencia—Franco Gauna. En la Hacienda de San Pedro y á los diez y ocho dias del mes de octubre de mil ochocientos veintiocho, Yó el expresado juez, siendo presente el C<sup>o</sup> Ygnacio Elias, por sí y como apoderado de su hermana D<sup>a</sup> Eulalia, los colindantes C<sup>o</sup> Capitan Ygnacio Elias y Nepomuceno Felix, el perito agrimensor Teniente Coronel de Yngenieros C<sup>o</sup> José Maria Caballero á quienes notifiqué e hice saber el auto que antecede de que quedaron entendidos y dándose por citados y nombrados se señaló el dia veinte del mismo mes para marchar á proceder a la medida, lo que firmaron conmigo y los de mí asistencia en la forma ordinaria. Por Alejandro Franco—Ramon Romero. Rubrica. Ygn<sup>o</sup> Elias. Rubrica. Juan Nepomuceno Felix. Rubrica. José de Caballero. Rubrica. Asis<sup>a</sup>—Ramon Romero. Rubrica. Asist<sup>a</sup>—Franco Gauna. Rubrica. Habienda llegado al puesto nombrado, San Ygnacio

de Bavocómari, el día veinte del mismo mes y año como punto en que rematan las medidas de los CC Capitan Ygn° Elias Gonzales y Nepomuceno Felix: por el rumbo Este Norueste para Ueste Suroeste, acompañado del interesado, perito agrimensor, oficiales que se han de nombrar y testigos de assistª., mande que antes de comenzar la medida se hiciera una inspección ó vista de ojo de los terrenos que se iban á mensurar á pedimento del C° Ygnacio Elias y su poderdante Dª Eulalia, y despues de bien reconocidos, hallé ser unos parages amplios para cria de ganado mayor y menor con agua la mayor parte de ellos procedente de ojos permanentes, con solo la nulidad de ser muy resgosos con abrigaderos del enemigo apache. Y para constancia lo pongo por diligencia que firmé con los de mí asistencia con quienes actúo. Por Alejandro Franco—Ramon Romero. Rúbrica. Ygn° Elias. Rubrica. Juan Nepomuceno Felix. Rubrica. Ygn° Elias Gonzales. Rubrica. Jose de Caballero. Rubrica. Asstª Ramon Romero. Rubrica. Asistª—Franco Gauna. Rubrica. En el mismo dia, mes, y año, yó el juez comisionado, a efecto de proceder á la mensura del terreno denunciado, en una loma pelona, frente de la Cieneguita de San Ygnacio de Bavocómari, nombré para contador al C° Lorenzo Sortillon, para cadeneros á los CCº Andrés Mendoza y Pablo Elias, para apuntadores á los C. C. Antonio Campoy y Mauricio Neiva, y juntos con el perito agrimensor C° Teniente Coronel José Mª Caballero, aceptaron los enunciados cárgos, prestando cada uno de por sí y en la forma correspondiente el juramento de estilo de usar fiel y legalmente de los cárgos que á cada uno corresponden, sin dolo ni fraude y obrando cada uno segun su leal saber y entender, y lo firmaron los que supieron conmigo y los de mi asistencia en la forma ordinaria de que doy fé. Por Alejandro Franco—Ramon Romero. Rubrica. Lorenzo Sortillon. Rubrica. Pablo Elias. Rubrica. Por Andres Montoya. Por Antonio Campoy, y Mauricio Neiva. Francisco Gauna. Rubrica. Asistª—Ramon Romero. Asista. Franco Guana. Rubrica. En el referido puesto y el mismo dia, mes y año, para proceder á la medida, estando presentes los interesados, oficiales nombrados y testigos de asistencia, mandé que se midiera un cordel de cincuenta varas, y atados sus extremos á dos astas, se precedió á la enunciada mensura por el perito agrimensor C Jose M. Caballero, quien colocando el agujon tomó el viento Este Norueste, cuarto al Este para Ueste

Surueste, cuarto al Ueste, donde hice poner mohonera cruz, y desde dicho puesto, por el referido punto, se midieron y contaron cien cordeles que remataron en un vallecito con inmediacion á unas lomas pelonas en donde hice poner mohonera, y por ser ya tarde hice recoger la cuerda y que los oficiales y demas se retirasen a descansar hasta el dia siguiente que continuase la medida, lo que pongo por diligencia y lo firmo con los de mí asistencia y demas interesados que me acompañaban de que doy fé. Por Alejandro Franco. Ramon Romero. Rubrica. Ygnacio Elias. Rubrica. Juan Nepomuceno Felix. Rubrica. Yguo. Elias Gonzales. Rubrica. Lorenzo Sortillon. Rubrica. José de Caballero. Rubrica. Por Anto. Campoy y Mauricio Neiva. Francisco Gauna. Rubrica. Por Andres Montoya y por mí. Pablo Elias. Rubrica. Asist. Ramon Romero. Asist. Franco Gauna. Rubrica. En el parage en que mande poner la segunda mohonera, nombrado el valle de San Ygnacio de Bavocómari, y acompañado del interesado, perito agrimensor, oficiales nombrados, para continuar la medida por el mismo rumbo, y á los veinte y un dias del mismo mes y año, hice reconocer de nuevo la cuerda de á cincuenta varas usuales, y reconocida que fué se amarraron sus extremos en dos astas y tendida la cuerda se midieron y contaron por el mismo rumbo doscientos cuarenta y tres cordeles que remataron en cima de una loma, que dá vista al viento sur surueste en donde se suspendio la medida por lo fragoso de la tierra muchas y profundas cañadas que se presentaban por el rumbo de ésta medida, por lo que fue de necesidad por mí y por el perito agrimensor hacer la regulacion de cincuenta y siete cordeles mas, para el completo del costado de tres sitios para ganado mayor terminando esta regulacion en el ojo de la agua caliente frentero de la Sierra de Santa Rita al pie de una loma pelona en donde mandé poner Mohonera esquina que dá vista á la falda de la expresada sierra y enunziado ojo de la agua caliente y desde dicho punto, por seguir la fragosidad del terreno y profundas cañadas para dar la cabecera de estos sitios por mí y por el perito agrimensor á ezcuada de la medida ya expresada por el viento referido, regulamos por el viento Norueste cuarto al Nornorueste, para sueste cuarto al Sursurueste—sesenta cordeles hasta el pie de un alamito que queda en un pequeño valle al pie de la enunziada Sierra de Santa Rita y para el completo de la cabecera ó



cuadra por el viento opuesto Sursurueste cuarto al Sueste para el Nornorueste cuarto al Noroeste se regularon los otros cuarenta cordeles que terminaron en una loma que tenia varios encimos en donde mandé que se pusieran las correspondientes mohoneras, con lo que con estos tres sitios para ganado mayor y el medido del dia anterior se completaron cuatro sitios; y por ser mas del medio dia, mande nos retirasen para la mahonera del centro como en efecto, habiendo llegado á la expresada mahonera del frente de la cienega de San Ygnacio del Bavocómari, hecho reconocer de nuevo la cuerda de cincuenta varas y amarrados sus extremos a las expresadas dos astas tendida la cuerda por el rumbo Ueste Sueste para Este norueste se midieron y contaron setenta y cuatro cordeles, que terminaron encima de unas lomas con inmediacion á la punta de la agua, en donde por ser ya noche se concluye la medida de este dia retirándonos todos á descansar, lo que pongo por diligencia firmandolo con el interesado, perito agrimensor, oficiales nombrados y testigos de asistencia de que doy fé. Por Alejandro Franco. Ramon Romero. Rúbrica. Ygno. Elias. Rúbrica. Juan Nepomuceno Felix. Rubrica. Lorenzo Sortillon. Por Andres Montoya y por mí Pablo Elias. Rubrica. Por Antonio Campoy y Mauricio Neiva. Franco. Gauna. Rúbrica. Ygn<sup>o</sup> Elias Gonzales. Rubrica. José de Caballero. Rubrica. Asist<sup>a</sup> Ramon Romero. Asist., Francisco Gauna. Rubricas. En el referido puesto y á los veintidos dias del mismo mes y año, yó el Juez comisionado, el interado, perito agrimensor y demas oficiales nombrados, hecha reconocer la cuerda de cincuenta varas y el rumbo del dia anterior por éste mismo rumbo, tendida la cuerda, se midieron y contaron veintiseis cordeles para el completo de cien cordeles para el costado de un sitio de ganado mayor, y por el mismo rumbo, pasando la cuerda por encima de varias lomas y cañadas, se midieron y contaron trescientos cordeles pasando los últimos por un valle con inmediación a los tanques del ojo de agua y terminando estos arriba de los expresados tanques en una loma pedregosa, en donde mande poner mohonera, esquina con la que se completó el costado de los otros cuatro sitios para ganado mayor en donde puesto el agujon por el perito agrimensor, puesta la cuerda escuadra y formando con el rumbo anterior un angulo recto ó de noventa grados, reconocida la cuerda y tendida por el rumbo sursurueste, cuatro al sueste para el nornorueste, cuarto al

norueste, se midieron y contaron cuarenta cordeles correspondientes á los del anterior cabeceado de los otros cuatro sitios terminando estos encima de unas lomas pelonas donde mande poner molionera esquina y volviendo al centro de la medida de esta cabecera por el rumbo opuesto, nornorueste, cuarto al norueste para el sursurueste cuarto de sueste se midieron y contaron sesenta cordeles para el completo de los cien cordeles terminando estos en la cima de un cerro muy encumbrado con lo que se concluyó la medida efectuandose el total de los ocho sitios para ganado mayor registrados por el C<sup>o</sup> Ygnacio Elias y su hermana Doña Eulalia, y dándose por recibido quedó conforme con las expresadas medidas advertido que oportunamente señalará sus linderos con molioneras de cal y canto segun está prevenido; y para constancia lo firmó conmigo y todos los que supieron con los de mi asistencia con quienes actuó por receptoria a falta de escribano segun derecho. Por Alejandro Franco. Ramon Romero. Rubrica. Ygn<sup>o</sup> Elias. Rubrica. Lorenzo Sordillon. Rubrica. Por Andres Montoya y por mi. Pablo Elias. Rubrica. Juan Nepouceno Felix. Por Auto. Campoy y Mauricio Neiva. Franco Gauna. Rubrica. Ygn<sup>o</sup> Elias Gonzales. Rubrica. José de Caballero. Rubrica. Asist. Ramon Romero. Asist<sup>a</sup>. Franco. Gauna. Rubrica. En la hacienda de San Pedro y á los veinticuatro dias del mes de Octubre de mil ochocientos veintiocho. Yó el Juez comisionado para proceder al aprecio y avalúo de los terrenos mensurados á favor del citado C<sup>o</sup> Ygnacio Elias y su hermana Doña Eulalia, compuestos entre ambos de ocho sitios para ganado mayor, tuve á bien nombrar para tales abaluaadores por constarme tener los conocimientos necesarios á los CC. Pablo Elias y Ramon Romero, vecinos del presidio de Santa Cruz, quienes se hallaron presentes a la medida y hécholes saber dicho nombramiento lo aceptaron y juraron en la forma que a cada uno corresponde, prometiendo hacer el avalúo sin dolo, fraude ni encubierta alguna y en esta virtud dijeron de conformidad y segun el reconocimiento que tienen hecho é impuestos en las ordenes que rigen sobre la materia, el que debe dárseles y les dan el valor de sesenta pesos á cada uno de los seis sitios de ganado mayor por tener agua permanente y a los otros dos restantes para el completo de los ocho sitios de ganado mayor, el de diez pesos cada uno por carecer en lo absoluto de agua con lo que suma el total de los ocho sitios para ganado mayor

el valor de trescientos ochenta pesos, y habiendoles leído á los avaluadores ésta declaracion la ratificaron y firmaron conmigo y los de mi asistencia con quienes actúo por receptoria segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. Pablo Elias. Rubrica. Ramon Romero. Rubrica. Asist., Ramon Romero. Asist., Franco. Gauna. Rubrica. En el presidio de Santa Cruz, a los Veintinueve dias del expresado mes y año, yó el Juez comisionado habiendo regresado á este Presidio y en vista de las antecedentes diligencias y avalúo de las tierras mercenadas al C. Ygnacio Elias y su hermana Doña Eulalia, compuestos de ocho sitios para cria de ganado mayor y menor, mandé se saquen al pregon por treinta dias consecutivos contados desde el dia de mañana segun se previene por la ley. Así lo proveyó y firmó el Sr Juez comisionado con los testigos de asistencia de que doy fé. Por Alejandro Franco—Ramon Romero. Rúbrica. Asist. Ramon Romero. Rubrica. Asist. Franco. Gauna. Rubrica. 1º pregon. En el mismo puesto, y á los treinta dias del mes de Octubre del referido año, yó el enunciado juez del mismo Presidio, hice que á son de caja se convocasen en la plaza pública del citado Presidio varios individuos y que en presencia de todos ellos dijese el pregonero Gregorio Gallegos en altas y claras voces. Las tierras del Parage nombrado San Ygnacio del Bavocómari sitas en esta Jurisdiccion y comprensivas para ocho sitios de cria de ganado mayor y menor á favor del C. Ygnacio Elias y su hermana Doña Eulalia, avaluadas en la cantidad de trescientos ochenta pesos se venden de cuenta de la Nacion; quien quisiera hacer postura se le admitirá la que hiciere concurriendo ante mí. Y no habiendo resultado postor alguno se puso por diligencia que firmé con los de mi asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. Asist—Ramon Romero. Rubrica. Asist. Franco. Gauna. Rubrica. 2º Pregon. En el mismo Presidio á los treinta y un dias del citado año y mes, se dió otro pregon igual en todo al anterior y no habiendose presentado postor lo puse por diligencia que firmo con los de asistencia, segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. Asist., Ramon Romero. Rubrica. Asist., Francisco Gauna. Rubrica. e Pregon. En el expresado presidio á primero de Noviembre de mil ochocientos ventiocho se dió otro pregon, y no habiéndose presentado postores se puso por diligencia que firme con los de

asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. Asist<sup>a</sup>., Ramon Romero. Rubrica. Asist<sup>a</sup>., Franco. Gauna. Rúbrica. 4 Pregon. En el citado Presidio á los dos dias del mes y año citados, se dió otro pregon, y no compareciendo postor sepuso ésta diligencia que firmé con los de mi asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. Asistencia—Ramon Romero. Rúbrica. Asistencia, Franco. Gauna. Rubrica. 5 Pregon. En el citado presidio a los tres dias del relacionado mes y año se dió otro pregon y no habiendo resultado postor se puso por diligencia que firmé con los de asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. Asist—Ramon Romero. Rubrica. Asist<sup>a</sup>., Franco Gauna. Rubrica. 6 Pregon. En el referido presidio á los cuatro dias del expresado mes y año se dió otro pregon y no habiendo ocurrido postor puse ésta diligencia que firmé con los de asistencia. Por Alejandro Franco—Ramon Romero. Rubrica. A. Ramon Romero. Rubrica. A. Franco. Gauna. Rubrica. 7 Pregon. En el mismo Presidio a los cinco dias del mencionado mes y año, se dió otro pregon y no habiendo postor se puso por diligencia que firmé con los de mi asistencia. Por Alejandro Franco—Ramon Romero. Rúbrica. A. Ramon Romero. Rubrica. A. Franco. Gauna. Rúbrica. 8 Pregon. En el citado Presidio á los seis dias del citado mes y año se dió otro pregon y no habiendo comparecido postor, se puso por diligencia que firmé con los de asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. A. Ramon Romero. Rubrica. A. Franco—Gauna. Rubrica. 9 Pregon. En el mencionado Presidio á los siete dias del mismo mes y año se dió otro pregon y no habiendo ocurrido postor se puso por diligencia que firmé con los de asistencia. Por Alejandro Franco—Ramon Romero. Rubrica. A., Ramon Romero. Rubrica. A., Franco. Gauna. Rúbrica. 10 Pregon. En el relacionado Presidio á los ocho dias del mes y año corriente se dió otro pregon y no habiendo resultado postor se puso por diligencia que firmé con los de mi asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rúbrica. A., Ramon Romero. Rubrica. A., Franco. Gauna. Rubrica. 11 Pregon. En el expresado Presidio á los nueve dias del mismo mes y año, se dió otro pregon y no habiendo comparecido postor se puso por diligencia que firmé con los de

mi asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. A., Ramon Romero. Rubrica. A., Franco. Gauna. Rubrica. 12 Pregon. En el citado presidio á los diez dias del citado mes y año, se dio otro pregon y no habiendo resultado postores se puso por diligencia que firmé con los de asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. A., Ramon Romero. Rubrica. A., Franco. Gauna. Rubrica. 13 Pregon. En el mismo Presidio á los once dias del citado mes y año se dió otro pregon y no habiendo resultado postor se puso por diligencia que firme con los de asistencia segun derecho. Por Alejandro Franco—Ramon Romero. Rubrica. A. Ramon Romero. Rubrica. A., Franco. Gauna. Rúbrica. 14 Pregon. En el citado Presidio á los doce dias del mismo mes y año se dió otro pregon y no habiendo comparecido postor, se pudo por diligencia que firmé con los testigos de asistencia. Por Alejandro Franco—Ramon Romero. Rubrica. A., Ramon Romero. Rubrica. A. Franco Gauna. Rúbrica. 15 Pregon. En el expresado presidio los trece dias del citado mes y año se dió otro pregon y no habiendo postor, se puso por diligencia que firmé con los de asistencia. Por Alejandro Franco—Ramon Romero. Rúbrica. A. Ramón Romero. Rubrica. Francisco Gauna. Rubrica. 16 Pregon. En el citado Presidio á los catorce dias del citado mes y año se dió otro pregon y no habiendo resultado postor, se puso por diligencia que firmé con los de asistencia segun derecho. Por Alejandro Franco, Ramon Romero. Rubrica. A., Ramon Romero. A., Franco. Gauna. Rubricas. 17 Pregon. En el mismo Presidio á los quince dias del mismo mes y año, se dió otro pregon, y no habiendo ocurrido postor, se puso por diligencia que firmé con los de mi asistencia. Por Alejandro Franco, Ramon Romero. Rubrica. A., Ramon Romero. A., Franco. Gauna. Rubricas. 18 Pregon. En el relacionado Presidio á los diez y seis dias del citado mes y año se dió otro pregon y no habiendo resultado postor se puso por diligencia que firmé con los de mi asistencia. Por Alejandro Franco, Ramon Romero. Rubrica. A., Ramon Romero. A., Franco. Gauna. Rubrica. 19 Pregon. En el citado Presidio á los diez y siete dias del citado mes y año se dió otro pregon, y no resultando postor se puso por diligencia que firmé con los de asistencia. Por Alejandro Franco, Ramon Romero. Rubrica. A., Ramon Romero.

A., Francisco Gauna. Rubricas. 2L Pregon. En el mismo Presidio á los diez y ocho dias del expresado mes y año se dió otro pregon y no habiendo resultado postor, se puso por diligencia que firmé con los de asistencia. Por Alejandro Franco, Ramon Romero. Rubrica. A., Ramon Romero. Francisco Gauna. Rubricas. 21 Pregon. En el relacionado Presidio á los diez y nueve dias del mismo mes y año se dió otro pregon, y no habiendo resultado postor, se puso por diligencia que firmé con los de asistencia segun derecho. Por Alejandro Franco, Ramon Romero. Rubrica. A., Ramon Romero. A., Franco. Gauna. Rubricas. 22 Pregon. En el expresado Presidio á los veinte dias del expresado mes y año se dió otro pregon y no habiendo postor se puso por diligencia que firme con los de asistencia segun derecho. Por Alejandro Franco, Ramon Romero. Rubrica. A., Ramon Romero. A., Ramon Romero. A. Francisco Gauna. Rubricas. 23 Pregon. En el mencionado Presidio á los veinte y un dias del citado mes y año, se dió otro pregon y no habiendo postor se puso por diligencia que firmé con los de asistencia. Por Alejandro Franco. Ramon Romero. Rúbrica. A. Ramon Romero. A., Francisco Gauna. Rubrica. 24 Pregon. En el mismo presidio á los veintidos dias del citado mes y año se dió otro pregon y no habiendo resultado postor se puso por diligencia que firme con los de asistencia segun derecho. Por Alejandro Franco. Ramon Romero. Rubrica. A., Ramon Romero. A., Francisco Gauna. Rubricas. 25 Pregon. En el expresado Presidio á los veintitres dias del mismo mes y año se dió otro pregon y no apareciendo postor se puso por diligencia que firmé con los de mi asistencia. Por Alejandro Franco. Ramon Romero. Rubrica. A., Ramon Romero. A., Franco. Gauna. Rubricas. 26 Pregon. En el relacionado Presidio á los veinticuatro dias del citado mes y año se dió otro pregon, y no resultando postor, se puso por diligencia que firmét con los de mi asistencia. Por Alejandro Franco. Ramon Romero. Rubrica. A., Ramon Romero. A., Francisco Gauna. Rubricas. 27 Pregon. En el citado Presidio á los veinticinco dias del citado mes y año se dió otro pregon y no habiendo ocurrido postor se puso por diligencia que firmé con los de mi asistencia. Por Alejandro Franco. Ramon Romero. Rubrica. A. Ramon Romero. A., Francisco Gauna. Rubricas. 28 Pregon. En el mismo Presidio á los veintiseis

días del citado mes y año se dió otro pregon y no habiendo postor se puso por diligencia que firme con los de mi asistencia segun derecho. Por Alejandro Franco. Ramon Romero. A., Ramon Romero. A., Francisco Gauna. Rubricas. 29 Pregon. En el expresado Presidio á los veintisiete dias del mismo mes y año se dió otro pregon y no resultando postor, se puso por diligencia que firmé con los de mi asistencia. Por Alejandro Franco. Ramon Romero. Rubrica. A., Ramon Romero. A., Franco. Gauna. Rubricas. 30 Pregon. En el mencionado Presidio á los veintiocho dias del expresado mes y año se dió el último pregon y no habiendo resultado postor, se puso por diligencia que firmé con los de mi asistencia. Por Alejandro Franco. Ramon Romero. Rubrica. A., Ramon Romero. A., Franco. Gauna. Rubricas. En el mismo Presidio, en dicho dia, mes y año, estando concluido éste expediente, remitase al Sr. Tesorero General, con citación del interesado á fin de que trasladándose por sí ó por apoderado á la Capital de Alamos asista á las tres almonedas de los terrenos pregonados que han de verificarse en la expresada Capital. Yó el juez comisionado así lo decreté mandé y firmé con los de mi asistencia segun derecho. Por Alejandro Franco. Ramon Romero. Rubrica. A., Ramon Romero. A., Franco. Gauna. Rubricas. Yncontinente en dicho dia, mes y año siendo presente el C. Ygnacio Elias por sí y como apoderado de su hermana D. Eulalia le notifiqué é hice saber el decreto que antecede y dándose por citado lo firmo conmigo y los de mi asistencia con quienes actuo por receptoría segun derecho. Por Alejandro Franco. Ramon Romero. Rubrica. Ygnacio Elias. Rubrica. A., Ramon Romero. A., Franco. Gauna. Rubricas. *Razon.* Se remitió éste expediente con oficio fecha 30 de noviembre de 1828 al Sr. Tesorero Gral del Estado y para constancia lo rubriqué. Franco. Rubrica. Alamos, 19 de Diciebre de 1828. Pase al Promotor Fiscal de la Hacienda del Estado para que exponga su dictamen. Gaxiola. Una rubrica. C<sup>o</sup> Tesorero General. Este expediente contiene la mensura de ocho sitios de tierra para la cria de ganado mayor y caballada practicada por el alcalda de Sta. Cruz en los parages de San Ygnacio del Bavocómari. Nada encuentro en contrario para que dejen de adjudicarse á los pretendientes si no es que exceden del número á que pueden concederse por el artº 21 del decreto de 20 de Mayo de 1825,

empero sí Ud está asegurado de los requisitos que expresa el 22, soy de opinion que se rematen en favor de los registrantes á menos que no aparesca otro mejor postor. Alamos, Dicbre 20 de 1828. Felipe Gil. Rubrica. Alamos 22 de Dicbre de 1828. Conformándome con el dictámen del Promotor fiscal que antecede, debia de mandar y mando se citen á los Sres vocales de la Junta de almonedas para practicar las tres ultimas y remate del terreno que expresa este expediente. Gaxiola. Rubrica. 1ª almoneda. En la ciudad Concepción de Alamos á los veintidos dias del mes de Diciembre de mil ochocientos veintiocho, reunidos en Junta de almoneda el Sr. Presidente y vocales que la componen con el objeto de celebrar la primera de los terrenos á que se contrae éste expediente dispusieron que a son de tambor se convocasen algunos ciudadanos en el oficio de ésta Tesoreria y que en su presencia procediese el que funcionó de pregobero Marcelo Parra, a dar un pregon como efectivamente lo dió en altas y claras voces, diciendo: "Van á rematarse las tierras del parage nombrado San Ygnacio de Bavocómari sitas en jurisdicción del Presidio de Santa Cruz comprensiva de ocho sitios para cria de ganado mayor y caballada y ganado menor, mensuradas á favor de Don Ygnacio y Doña Eulalia Elias y avaluados en tres cientos ochenta pesos; quien quisiera hacer mejor postura, ocurra ante esta Junta donde se le admitirálo que haga. Y no habiendo ocurrido persona alguna se pone por diligencia para constancia. Faxiola. Rubrica. Almada. Rubrica. Gil. Rubrica. 2ª almoneda. En la expresada ciudad á los veintitres dias del mes de Dicbre de mil ochocientos veintiocho, convocados en Junta los Sres. Presidente y vocales que la componen con el fin de celebrar la segunda almoneda de los terrenos que expresa éste expediente mandaron se practicase en los mismos terminos que la primera antecedente, lo que se verifico añadiendo unicamente el que hizo veces de pregonero que el dia de mañana habia de quedar celebrado el remate. Y no habiendo resultado postor se pone por diligencia para constancia que firmaron los Sres. de la Junta. Gaxiola. Rubrica. Almada. Rubrica. Gil. Rubrica. 3ª almoneda. En la nominada ciudad de la Concepción a los veinticuatro dias del mismo mes y año hallandose reunidos el Sr. Presidente y vocales de la expresada Junta de almonedas, dispusieron se evacuase la tercera y remate de los terrenos que menciona este expediente lo cual se



hizo en la misma conformidad que las dos anteriores, con solo añadir el pregonero que en éste momento ha de quedar celebrado el remate. Y habiendo dado la plegaria de las doce de éste día sin que ocurriese postor alguno, dijo por último el pregonero en alta voz "a la una, á los dos, á las tres: que se remata que se remata que se remata: que buena que buena que buena les haga a Don Ygnacio y Doña Eulalia Elias. En tales terminos se concluyó este acto quedando pública y solemnemente rematado á favor de dichos interesados los ocho sitios de tierra para cria de ganado mayor y caballada en el parage nombrado San Ygnacio del Bavocómari, jurisdiccion del Presidio de Santa Cruz, en la cantidad de Trescientos ochenta pesos en que fueron avaluados. Y para la debida constancia se pone esta diligencia que firmaron los Sres. Presidente y vocales de la Junta con el C. Capitan Ygnacio Elias como apoderado de los interesados. Gaxiola. Rubrica. Alnada. Rubrica. Gil. Rubrica. Ygnacio Elias Gonzales. Rubrica. Arispe, 19 de Octubre de 1832. Habiendose verificado el entero de trescientos ochenta pesos en la Tesoreria General del Estado Unido, en que se remataron los ocho sitios de tierras comprendido en el questo nombrado San Ygnacio del Bavocómari á favor del C<sup>o</sup> Ygnacio Elias y Doña Eulalia Elias vecino el primero de la Villa de Rayon y la segunda de esta Capital, como lo comprueba la certificación que está agregada al expediente, expidase el titulo de merced en forma para su resguardo. El Tesorero Gra del Estado de Sonora así lo proveyo y firmó con testigos de asistencia segun derecho. Mendoza. Rubrica. A., Mariano Romo. Rubrica. A., Luis Caranco. Rubrica. En 25 de Diciembre de 1832 se expidió titulo de merced del terreno del Bavocómari de que trata este expediente. Mendoza. Rubrica. Nicolas Maria Gaxiola, Tesorero Gral. de las Rentas del Estado de Occidente, Certificó que al folco 3 vuelta del manual de ésta Tesoreria, del corriente año, se halla sentada con ésta fecha la partida siguiente Cárگو en mercedes de tierra trescientos ochenta pesos que enteró el Capitan Don Ygnacio Elias á nombre de Don Ygnacio y Doña Eulalia Elias vecinos de Arispe, por la merced de ocho sitios de tierra para cria de ganado mayor y caballada en el parage nombrado San Ygnacio del Bavocómari, jurisdiccion del Presidio de Santa Cruz, avaluados en la indicada cantidad, que se remataron á su favor sin opositor alguno en Junta de almonedas celebrada en ésta Tesoreria el día 24 de

Diciembre próximo pasado \$380. Gaxiola. Rubrica. Ygnacio Elias Gonzales. Rúbrica. Y para que conste doy la presente en Alamos á ocho de Enero de mil ochocientos veintinueve años. Nicolas Maria Gaxiola. Rubrica. Testado. C. No vale. E. L. expresado. Lorenzo Sortillon. Juan Nepomuceno, Felix. Vale.

Es copia exacta de su original que autorizo y firmo en Hermosillo á ocho do Febrero de mil ochocientos noventa y ocho.

N. AGUILAR.

N<sup>o</sup>. 30.

By *of Atty. Gen.<sup>r</sup> (Richardson & Reynolds)*  
for Appellants.

Filed Oct. 11, 1897.

---

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

---

ROBERT PERRIN, APPELLANT,	} No. 30.
v. THE UNITED STATES ET AL.	

---

—BAROCOMARI GRANT IN ARIZONA.

---

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

---

STATEMENT, ABSTRACT, AND BRIEF ON  
BEHALF OF THE UNITED STATES.

---



# In the Supreme Court of the United States.

OCTOBER TERM, 1897.

---

ROBERT PERRIN, APPELLANT,	} No. 30.
<i>v.</i>	
THE UNITED STATES ET AL.	

---

*APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.*

---

## STATEMENT, ABSTRACT, AND BRIEF ON BEHALF OF THE UNITED STATES.

On February 27, 1893, ROBERT PERRIN filed a suit in the Court of Private Land Claims against the United States and a number of other defendants, seeking the confirmation of what is commonly called the SAN YGNACIO DEL BABOCÓMARI GRANT, alleging that on December 25, 1832, the state of Sonora, of the republic of Mexico, granted and conveyed to Ygnacio Elias and Eulalia Elias a certain tract of land known and designated as the ranch of San Ygnacio del Babocómari; that said grant was complete and perfect at the time of the transfer of the sovereignty of that country to the United

States; that the form of title was a patent or grant, based upon a sale, executed by José Mendoza, treasurer-general of said state, under the seal of the general treasury of said state. That by mesne conveyances the plaintiff had succeeded to and become the owner of said land, and is seized in fee and entitled to the possession thereof. It alleges also that the petitioner is in actual possession and occupation of all the lands except small portions thereof, which are in the possession of a number of persons named, without the license or permission of the plaintiff. He names a number of persons who claim some interest in said grant, but what he does not know. The petition then sets forth a specific description of the property as shown by the survey of a Mr. Roskruge, and containing 128,000 acres, concluding with the usual prayer for confirmation. (R., 1, 2.)

The answer of the government denies any information or knowledge in relation to the same, and asks that plaintiff be put to strict proof of the allegations contained in the petition. (R., 5.)

The petition is based upon a *testimonio* (Spanish, R., 62-71), translation of which is Exhibit B (R., 72-80). The petition therein is dated Arizpe, March 12, 1827, in which Ygnacio Elias and Eulalia Elias state that, needing a tract of land for their stock, they denounce, in company with Don Rafael Elias, Capt. Ygnacio Elias, and Don Nepomuceno Feliz, a vacant tract of land "*adjoining the ranch of San Pedro, situated in the jurisdiction of the presidio of Santa Cruz, as far as the place of Tres Alamos,*" obligating themselves to pay to the nation the corresponding tax, with all other matters that justice

might require, until title and confirmation shall be obtained. [As stated in my note of explanation found in the statement of the San Rafael del Valle case, CAMOU c. UNITED STATES, No. 28, this petition is the original petition of which the one in the San Rafael del Valle case is a copy, and asks for the same land, with the identical description, as above quoted.]

On July 1, 1827, the treasurer-general, Gaxiola, ordered the *alcalde* of Santa Cruz to proceed in the matter without prejudice to any third person who might have a better right, first citing the adjoining proprietors to the measurement, valuation, and publication for thirty days consecutively of the lands referred to, subject to the sovereign decree of the honorable constituent congress of the state, No. 30, of May 30, 1825, and the regulations accompanying the same, and upon the conclusion of the proceedings taken in the order he was to transmit them to the treasurer-general's office, notifying the bidders to appear personally, or by their agents, at the sale which was to be made at that office after the three consecutive publications (*almonedas*). (R., 73.)

Fifteen months thereafter at the *presidio* of Santa Cruz, to-wit, on October 5, 1828, the act of obedience was executed by Alejandro Franco, constitutional *alcalde* of the *presidio* of Santa Cruz, stating that he would proceed to the *hacienda* of San Pedro for the purpose of measuring the lands asked for by the petitioners. It will be noted that the constitutional *alcalde*, Alejandro Franco, did not sign this act of obedience, but that it was signed for him by Ramón Romero. (R., 73.)

The *testimonio* recites that the *alcalde* surveyor, after summoning the adjoining proprietors, proceeded to the appointment of tally-men, measurers, and recorders, who were citizens Lorenzo Sortellon, Andrez Montoya, Pablo Elias, Antonio Campoa, and Mauricia Neiro, who accepted the appointments and duly qualified under oath. (R., 73.)

The survey recites that at said place (supposedly the ranch of San Pedro), on the said day, month, and year, in order to proceed to the survey, all parties being present, he ordered a cord of fifty *varas* to be prepared, with poles tied at the extremities. The expert surveyor ("*el perito agrimensor*"), José Maria Caballero, proceeded to the survey, and setting up the compass, took a course east northwest quarter east to the west southwest quarter west (*este Norueste cuarto al este para oeste surueste cuarto al oeste*), where he had a cross monument placed, "and from said point through said point there were measured and counted one hundred cords, which terminated in a small valley near some bald hills (*lomas pelones*), where I caused a monument to be placed." (R., 73, 74.) This concluded the survey for that day.

The following day the surveyor states that in the place "where I ordered the second monument put, called the valley of the San Ygnacio del Babocómari," accompanied by the parties, for the purpose of continuing the survey in the same direction, he caused the cord to be examined, and there were measured and counted in the same direction two hundred and forty-three cords, which terminated on a hill (*loma*) which looks south-southwest, where the survey was suspended on account of the roughness of the ground and many deep valleys which occur in



the direction of this survey, wherefore it was necessary for the *alcalde* and the surveyor to estimate fifty-seven *varas* more to complete the side of the three *sitios* for cattle. This estimated, the distance terminated at the hot spring in front of the Santa Rita mountains at the foot of a bald hill (*loma palon*), where he ordered a corner monument placed, which looks toward the slope of said mountain and Hot Spring, from which point, on account of the roughness of the ground and deep valleys, in order to measure the sides of these *sitios* and to square the measurements already stated in said direction, the surveyor and the *alcalde* estimated toward the northwest quarter north-northwest to the southeast quarter south-southwest (*Norueste cuarto al Nornorueste para Sureste cuarto al Sur-surueste*—R., 65, line 24) sixty cords, to the foot of a small cottonwood tree in a small valley at the foot of the said Santa Rita mountains, and to complete the side of the square in the opposite direction south-southwest quarter south-east to the north-northwest quarter northwest (*Susurueste cuarto al sueste para el Nornorueste quarto al Norueste*—R., 65, lines 28–31) the remaining forty cords were estimated, and ended on a hillock that has several oak trees, where he ordered a corresponding monument to be placed, which, with these three *sitios* for cattle and the one surveyed the day before, four *sitios* were completed, and it being midday, it was ordered that they return to the center monument, and when they arrived at said monument, in front of the *ciénega* of San Ygnacio del Babó-cómari, and having again examined the cord, the surveyor stretched the cord in the direction west-southeast to the east-northwest (*ueste Sueste para Este Norueste*—R., 65,

line 41), and there were measured and counted seventy-four cords, which terminated upon some small hillocks near the point of the water (*punta de la Agua*), and the survey was concluded for the day. (R., 75.)

On the following day, with all the parties and "*el perito agrimensor*," he again caused the cord to be examined and stretched along the same course, and there were measured and counted twenty-six cords to complete the hundred cords for the side of one *sitio* for cattle, and in the same direction, the cord passing over several hillocks and valleys, there were measured and counted three hundred cords, the last ones passing along the valley near the tanks of the spring of water and ending above said tanks on a rocky hill, where he ordered a corner monument to be placed, which completed the side of the other four *sitios*, where the surveyor, having set up his compass, placed the cord and the square, and forming from the preceding course a right angle "or angle of ninety degrees," and again having examined the cord and stretched it in the direction south-southwest quarter southeast to the north-northwest quarter northwest (*Sursureste cuarto al Sueste para el Nornorueste cuarto norueste*—R., 66, line 37), there were measured and counted forty cords corresponding to those of the former side of the other *sitios*, these latter terminating upon some bald hills, where he ordered a corner monument to be placed.

Returning to the center of the measurement of this side in the opposite direction north-northwest quarter northwest to the south-southwest quarter southeast (*Nornorueste cuarto al Norueste para el sursurueste cuarto al Sueste*—R., 66, line 45), there were measured and

counted sixty cords to complete the hundred cords terminating on the summit of a very high hill, with which the survey was terminated, completing the total eight *sitios* for cattle registered by the citizen Ygnacio Elias and his sister Donna Eulalia Elias, which he received, being satisfied with said survey and being notified to in due time mark his boundaries with monuments of stone and mortar. (R., 75, 76.)

The *testimonio* further recites that after the survey the *alcalde* proceeded to the valuation of the land, appointing intelligent experts for that purpose who took the oath in accordance with the regulations and valued the tract in the sum of three hundred and eighty dollars, for the reason that six *sitios* of the tract contained running water, and two *sitios* thereof being arid, they valued at ten dollars per *sitio*, and upon this valuation the *alcalde* offered the tract for sale for thirty days, and no purchasers appearing, the *expediente* was concluded, and by letter of November 30, sent to the treasurer's office for the necessary proceedings in the matter, and by the order of December 19 the same was referred to the attorney-general for report. (R., 76.)

December 20, 1828, Felipe Gil made his report to the treasurer-general, in which he states the *expediente* contains the survey of eight *sitios* of land for breeding horned cattle and horses, and he found nothing in the proceedings to prevent the adjudication of the land to the petitioners, unless it be that the quantity exceeded that mentioned in article 21 of the decree of May 20, 1825, but if the treasury was satisfied as to the requirements recited in the twenty-second article, he was of the

opinion that the land should be sold to the denouncers as there was no one willing to pay a higher price for the same. (R., 76, 77.)

The *testimonio* further recites that the treasurer-general, being satisfied with the foregoing report of the attorney-general, by proceedings of the twenty-second, the three *almonedas* were made, notifying purchasers, and none appearing, the eight *sitios* of land were sold to the denouncers. The third *almoneda* is recited in the *testimonio* and dated on the 24th of the month. (R., 77.)

It further appears that the agent, Capt. Ignacio Elias Gonzales, deposited in the treasury three hundred and eighty dollars, as appears by the certificate of the treasurer-general. (R., 77, 78.)

The whole was concluded by the certificate of the treasurer-general, dated January 8, 1829. (R., 79.)

This concluded the *expediente*.

On December 25, 1832, José Maria Mendoza, treasurer-general of the state of Sonora, executed the grant or patent, in all respects similar to that in the San Rafael del Valle case, No. 28, on the present docket. This title was not delivered till May 8, 1833, evidently having been withheld on account of the letter of Nicolas Maria Gaxiola, of April 25, 1828 (to be found on page 199 of the record in the San Rafael del Valle case, No. 28, *Canon v. United States*).

Then follows communication No. 762, being an order of Governor Bustamante on the treasurer-general to issue the grant. (R., 79.)

It is admitted on behalf of the United States that the *expediente* in this case is on file in the archives, and that

the *toma de razon* of the same has been made in the proper book, as of date May 8, 1833; that the petition is in the usual form.

The questions involved in this case are identical with those of the San Rafael del Valle case, above mentioned, with the additional point that the survey in this case is void for uncertainty.

It will be noticed that the location of the San Pedro grant is absolutely necessary to be determined, and this grant, as now located, is many miles from the San Pedro as located and confirmed by the Mexican government, which will appear by the testimony of Mr. Bonillas in the San Rafael del Valle Case and his map attached thereto. (R., 200.) It will also be noted that the petition in this case is for the same land desired in the petition for the San Rafael del Valle grant, and also for the Boquillas y Nogales grant.

R. C. HOPKINS testified on behalf of the plaintiff, and his testimony may be included in an admission by the government that the *expediente* is in the usual form; that the signatures, as far as the government is able to determine, are genuine; that the *toma de razon* of the same exists in the proper book in the proper archives.

Witnesses RAMON ALDARETTA, ISODORO CASTRO, JESUS NUNEZ, and JOSÉ RODRIGUEZ testified on behalf of the plaintiff that they had seen stock of the Elias's on the Babocómari ranch from time to time, and also their ranch houses. (R., 14-26.)

GEORGE J. ROSKRUGE testified on behalf of the plaintiff. This is the same witness who made the surveys in

the Sonoita, Canoa, and San Rafael del Valle grants, and whose peculiar manner of construing the calls of the *expediente* has been noticed in the briefs in those cases.

He testified that he had occasion to make a survey of the Babocómari grant, which was evidently made under very unfortunate conditions, as shown by his answer. (R., 26.) Says he did not make a regular survey; a certified copy of the *expediente* was delivered to him by Mr. Cameron; states that he went to the center to look for a monument, "but of course quit looking for the monument." Witness went to the *ciénega*, about where the center monument would be, and then started west toward the hot springs, which are now called the Monkey Springs. The spring is a warm spring, and near it he found a monument of stones on the ridge overlooking the valley and facing the Santa Rita mountains; "the monument that I found there was an old monument, of course."

Witness produced a photograph of the same, which was marked Exhibit 1.

This he designates as the west center monument. From this point he went up what he calls the Bachata cañon about five miles and sixty chains, where he found a big cottonwood tree in a little valley right in the foothills, the tree being about five feet in diameter.

Witness produced and identified a photograph of the same, which was marked Exhibit 2.

There is no other cottonwood tree in the neighborhood. After leaving the cottonwood tree he ran from the west center monument in a southeasterly direction to

the top of a high hill, where he found an old monument of stones; from the top of this hill he could see the cottonwood tree, looking over the spring. Witness produced and identified a photograph of the monument on this hill, the southwest corner monument looking toward the Santa Rita mountains, which was marked Exhibit 3.

Exhibit 4 witness identified as a photograph of the hot springs.

Exhibit 5 witness produced and identified as another photograph of these hot springs.

Exhibit 6 witness produced and identified as a photograph of the little valley at the foot of the Santa Rita mountains, showing the cottonwood tree, which is the northwest corner monument.

Exhibit 7 witness produced and identified as the west center monument at hot springs, looking up the *cañon* toward the cottonwood tree.

After that, they went back to the center monument or to the ranch house near the center, and then started down to the bald hills, riding across the country on horseback toward the east; they found nothing over this course until they got to the bald hills, which were three in number altogether.

Witness produced and identified a photograph of the same, which was marked Exhibit 8.

Exhibit 9 witness produced and identified as a photograph of the southeast corner monument on bald hill.

Further, he went north toward the *cañon* and searched for the monument which is described as being near some tanks of water, and, as witness understood, little rocky

hills, and he did not have any trouble in finding it. He designates this as the east center monument on the rocky hill; produced and identified a photograph of the same, which was marked Exhibit 10.

He kept on toward the north to the first high hill he found; on top of that hill he did not find a monument; he is satisfied he did not.

Witness produced and identified a photograph of this hill, which was marked Exhibit 11.

Witness states that in going from one of these points to the other they did pay attention to the distances; that the point of the *cienega* is located on his county map; he passed right through that *cienega* and knew to a foot where it was, and in coming by the hot springs that is a surveyed line, and he knew where it was; when on top of this hill, the west center monument, he took his bearings from a corner of the standard line and another from what is called the Casa Blanca. From the northwest monument he took his bearings to the southwest monument, and then took other bearings which he does not recollect. He had run lines in there for grants, but forgot just what he had done. He took enough to satisfy himself that he could place it on the map, and did the same at the other corners. With this data he came back and made the map showing the whole country, and from his triangulating points he protracted the whole thing out as he did in the Sonoita grant. He had a copy of the *expediente*; there were courses set out in it and they were apparently run by a mariner's compass, and he thinks they are a little mixed; does not remember whether he



followed those courses, but supposed he did. Says that the end boundaries correspond to those called for in the *expediente*, and he has not the slightest doubt in the world but they are the same.

Taking the *expediente* and following the calls thereof he would have no difficulty in locating this grant according to the natural calls. From the data he obtained in making the survey he compiled the map in evidence. In coming from the center station toward the point of the bald hills easterly he found some tanks (water-holes), which were the only tanks he saw in the neighborhood. They were west from the rocky hill, as he remembers.

On cross-examination witness testified that he had lost his field-notes. When he speaks of monuments in his testimony, he means piles of stones, unless he designates the monument as a hill. Referring to his map, he says that he has no doubt but that he has correctly designated the grant thereon according to the calls of the *expediente*. If a correct construction of the *expediente* calls for square corners, instead of acute or obtuse angles, he says he has not laid it down correctly.

At this point counsel for plaintiffs admits that there is more distance in the calls of this survey than in the calls of the original survey contained in the *expediente*.

Witness says he made the width of the grant in one part five and a half miles, and in another part wider; the line between the northeast and southeast monument is about nine and a half miles; states that if a proper description of the *expediente* is that the grant is one league wide, he has taken about three times too much.

In extending his map, he did not pay any attention to the measurements expressed in the *expediente*, and paid no attention to distances at all. In extending the lines on the grant, he did not remember whether he paid any attention to the courses, as they were terribly mixed up. Does not recollect whether he followed them; that he went straight from the *cienega* to the hot springs in the valley on horseback, in company with Mr. Cameron and Mr. Bruce, and does not remember whether anyone else was with him or not, but he knew where the hot springs were before he started to them.

*Witness was unable to state how to solve a triangle, and what parts were necessary to be known to find the others. (R., 35, 36.)*

Witness then proceeds to give an account of how he scaled the survey on a sectional map. He states (R., 37):

Q. Now, the calls of the *expediente* require that the line from Monkey Springs eastwardly to the center was three hundred cords. Why did you protract this map upon the ground so that the line would be nearly six hundred cords long?

A. Because I made a map showing what I believed to be the original calls of the *expediente*, knowing very well that the Mexicans never measured an inch of it.

Q. You were going on the theory that when those gentlemen said they measured three hundred cords, as a matter of fact they measured six hundred cords?

A. I know they never measured an inch of it.

Q. Did you go on the theory that they were not on the ground?

A. That I didn't know anything about?

Q. Didn't you go on the theory that they measured it as you did—on horseback?

A. Of course they did; that is what they say.

Q. Did not Brewster (Bruce or) Cameron point out to you every pile of stones that you have there?

A. No, sir; Mr. Bruce got tired and left. He had business somewhere else.

Witness states that the *expediente* called for an eight league grant, but he did not protract it with any regard to the size of the grant or quantity of land, and no attention was paid to courses and distances; that if he had been trying to verify an American surveyor's survey, he would have tried to find the lines and measure them, but that would be different in verifying the survey of a Mexican surveyor, and, going over the grant, he would find his lines ten or fifteen miles out; that he endeavored to run the lines of this *expediente* again and again, but found the *mesas* called for ten or fifteen miles ahead of him, and therefore he could not see the use in stopping in the middle of a plain; that the courses used by the Mexicans were terribly stretched and their estimates a little out, and he did not try to retrace them. Witness states that fifty cords is a unit of measure well known among surveyors; that his excuse for not measuring from the center westward is because he was afraid that a man living on the grant would kill him (R., 39), although he managed to get from the center monument to the Monkey Springs and all over the grant on horseback.

Without going further into the rambling testimony of this witness, it is apparent that he did not attempt to make a survey of the grant, and located a number of natural

objects that might possibly correspond to those called for in the *expediente*, locating them with reference to the section corners of the public surveys, and then scaled an area of one hundred and twenty-eight thousand acres for an eight-league grant, and testifies now that it is according to the calls of the *expediente*. This is a fair sample of his testimony in every case, in which the court will have occasion to notice it. (R., 26-43.)

F. C. MERRILL testified, on behalf of the defendants, that he first came into the San Pedro valley in 1846, coming over what is known as the Guadalupe pass near, the San Bernardino ranch, and from there went westerly across the foot of the San José mountains to the San Pedro river, going down the valley till he passed the mouth of the Babocómari, and then crossed to the *ciénega* at Pantano. That there was no one living in the country when he passed through; that the *ciénega*, as well as he remembers, it being forty-eight years ago since he was there, was about four miles across from the San Pedro. He tried to avoid the river on account of the roughness of the hills. States that he saw no inhabitants on the San Pedro or on the Babocómari. (R., 43-45.)

CHRISTOPHER LAYTON testified, on behalf of the defendants, that he came into that country in 1846; had enlisted in the Iowa volunteers, and came in there with Colonel Cook during the war with Mexico; that he crossed the San Pedro river somewhere above the mouth of the Babocómari, coming by the San Bernardino ranch and striking westwardly across the San Pedro, and

then across the Babocómari to the best of his recollection, some little distance above its mouth. There was nobody living in the Babocómari valley at the time. States that he went back there eleven or twelve years ago and found Colonel Merrill there; that he went up the Babocómari there at the time, and found people living up there, but he does not know how they claim; thinks they claim under the public land laws.

Witness states that he was with the first expedition that came in there, which came around the Whetstone mountains, and witness helped raise the Stars and Stripes at Tucson. (R., 45-47.)

WILLIAM J. ROSS testified, on behalf of the defendants, that he first saw the valley of the Babocómari in 1868, when he was in the army, and no one was living there at the time between what is known as Crittenden down to its mouth and occupying it as a grant. There was a garrison of soldiers at Fort Wallen. (R., 48.)

PETER R. BRADY testified, on behalf of the defendants, that he came to the valley of the Babocómari in April, 1854, and there was no one living there at all. (R., 48.)

HENRY O. FLIPPER testified, on behalf of the government, that he was a civil engineer, and employed as special agent of the Department of Justice; that he had been to the city of Hermosillo, Sonora, Mexico, and examined the archives there with reference to the Babocómari grant; that he had with him the *testimonio* of title of that grant and compared it with the *expediente* there; that the one was not an exact copy of the other; that the

*testimonio* began with the preamble and ended with a granting clause, neither of which are in the *expediente* in Hermosillo; that the *pregones* and *almonedas* are given in full in the *expediente* in Hermosillo and are not so given in the *testimonio*; that he found no copy of the grant in Hermosillo as attached to the *testimonio*; that Mr. Rochin, in charge of the archives there, gave him all assistance in his power. Witness also described the character of the paper on which the instrument at Hermosillo is written. He testified that he had had occasion to investigate Mexican and Spanish archives in relation to private land claims; that he first began his work in that respect in 1882, in the survey of public lands under concessions given by the Mexican republic; that he had been engaged in that work in Mexico ten or eleven years; that he is thoroughly familiar with surveys under the Spanish and Mexican systems as they existed in Sonora and Mexico; that his surveys were principally in the states of Sonora and Chihuahua; that stamped paper had different prices according to the tax the government collected on documents; that paper dated for the year the document was made had to be used; that when there was no paper made for that year, paper of some other year was used, but it was marked at the top that it was good for the year in which used; that no such notations were made in the *expediente*; that the official who sold the paper should make such notations.

Witness also testified that he compared the notes of survey in the *testimonio* with those in the *expediente* at Hermosillo and that they are the same in both instruments; that he could not locate the property from the

calls as given in these two instruments, because some of the calls are impossible.

Witness took a translation of the *testimonio* of title and went to the blackboard, and reading the first course, "east northwest quarter east to the west southwest quarter west," testified that "east northwest quarter east" was impossible, because it passes a cardinal point, and "west southwest quarter west" was a possible course, and illustrated it on the blackboard, drawing a line to represent the first course and the first one hundred cords measured to a point in a little valley close to some bald hills. Witness prolonged the line on the blackboard to represent the two hundred and forty-three cords measured and counted, and the fifty-seven cords estimated, both in the same direction as the first one hundred cords. He also testified that the next course was a possible one, and drew a line on the board representing its length of sixty cords; that "southeast quarter southwest" could not be determined, because it passes a cardinal point; that "north-northwest quarter northwest" can be determined, and indicated on the blackboard how that course would run; that returning to the center monument and thence "west southeast and east northwest," measuring seventy-four cords, then estimating twenty-six cords, finally measuring three hundred cords, was impossible, because that course could not be determined; that the lines he represented on the blackboard were the only ones he could lay down, the others being impossible; that, if the natural objects located by Mr. Roskrugge are topographically correct on his map, the courses the *expediente* calls for, if run out from the center, would not go to those

natural objects ; that if the distances were run out, they would not go to them ; that if he could get out to the end of a line he indicated on the blackboard and knew what direction to give the next call—"south-southwest quarter southeast," which is also impossible—he might be able to lay out more of the calls of the title papers which correspond with the calls of the *expediente* at Hermosillo ; that the next call, "north-northwest quarter northwest," is possible and so is the next, which is the same, but "south-southwest quarter southeast," is impossible ; that it is impossible to lay them down, because they go from a point that can not be laid down itself ; that there is no way to lay this grant down so as to close it up ; that most of the calls are impossible and angles and distances given in the *expediente* can not be laid down at all ; and that the calls and distances would not go to any of the natural objects, nor anywhere near them, but in a different direction ; for instance, the hot spring is pretty nearly due west from that point (indicating the initial point) and the line called for is south seventy degrees west, so following this course the line would go nowhere near the hot springs ; that following the course from the center line, running it out any distance, it would not go anywhere near Mr. Roskruge's point, because his center monument is wrong, is not the true center monument ; that he had had occasion to examine the country with reference to piles of stones called by Mr. Roskruge "monuments" on his center line ; that he describes the center monuments as being in the *cienega* (marsh), while there is no monument there



whatever; that on the north side of the *cienega*, probably three hundred yards from it, there are three piles of stones on a line nearly east and west, each of them about eight inches high and three feet wide, of small loose stones; that the middle one contained nine large stones, each about eight by eight by six inches; that the west one has stones about the size of those in the middle one and is about three feet across; that the middle pile is forty feet from the west pile and thirty feet from the east pile; that he had found any number of monuments of the same character all over that country and ascribed them to Indians.

Witness further testified that there is no monument at Monkey Spring itself; that the spring is in a vale and about two hundred yards west of it, on the top of a hill, is a loose pile of stones; that the monument described in the *expediente*, where the estimated distance terminates at the hot spring, at the foot of a bald hill, he could not find at the foot of that hill not even one rock in any direction till he got to the top of the hill, and then there is the pile of loose stones, just thrown together, not piled up at all, probably four feet across, of the same kind of stones seen in other places; that he had reduced to cords the various lines laid down on the Roskrige map; that the distance from the center point on this map to the east center monument is five hundred and eleven cords; from the east center to the northeast monument two hundred and sixty-seven cords; from the east center to the southeast monument, ninety-five cords; from the starting point at the *cienega* to the west center monument,

five hundred and sixty-four cords; from the west center monument to the northwest monument, two hundred and nineteen cords; and from the west center to the southwest monument seventy-six cords, being Mr. Roskrug's distance in miles and chains reduced to Mexican cords; that a linear league contains one hundred cords; that he had calculated the area of the grant as given on that map; that the figure does not close; that he balanced the figure and found it to CONTAIN ONE HUNDRED AND THIRTY-ONE THOUSAND FIVE HUNDRED ACRES OR ABOUT THIRTY AND ONE-HALF SITIOS; that in the *expediente* there is a recital as to why title had not been issued to the effect that the government of the state of Sonora had consulted the congress of the union as to authority to issue titles and until answer was received the treasurer-general gave a certified copy of the *expediente* to the party; that he saw a similar recital attached to the *expediente* of the Boquillas at Hermosillo, signed "Gaxiola, treasurer-general of the state of the west," dated April 25, 1828.

On cross-examination, Mr. Flipper testified that he had no way of knowing whether the courses were mistakes; that he could not take the calls of the grant and locate the east center monument; that it is impossible to know what the call means; that the translator did not know what it meant; that it had been corrected a dozen times in the claimant's translation; that "southeast quarter south-southwest" was impossible; that he went to the east center monument, and that there is a rocky hill there, but no tank of water, nor any before reaching

there; that, disregarding wrongful courses and distances, the rocky hill does not correspond with the call for the east center monument in the *expediente*, because there are not only the rocky hill marked on the map, but five or six of them running across, as indicated by witness, and that he did not know which one was referred to in the *expediente*; that he did not go to the southeast, northeast, northwest, or southwest corners, but only over the center line; that he had followed the general trend of the Babocómari creek, which runs generally east and west; that the valley and creek generally are included within the Roskruge map, and that the latter goes over on to the head of the Sonoita creek; that it passes one of the hot springs, there being two of them, one near Fort Crittenden, east of Monkey Spring and south of Fort Crittenden (indicating on the map); that the spring on the Roskruge map is called Hot Spring, and the other Monkey; that he had known Hot Spring since 1886 or 1887; that the Hot Spring witness speaks of is in a valley, on the south bank of the Sonoita creek; that the southwest and northwest corners are not visible from there; that the Santa Rita mountains are in full view from there, from that spring; that the *titulo* is on the proper paper; that all official documents are required to be written on stamped paper; that he had examined a great many other *expedientes* and matrices in Sonora, all on stamped paper; that the law requires all *expedientes* to be on stamped paper; that the laws of Sonora of 1825 and 1834 say that proceedings shall be on stamped paper and the denouncer of the land shall pay for them; that he knows of no law

that particularly says matrices shall be on stamped paper, but that proceedings and documents shall be on stamped paper; that Monkey Spring is the larger of the two springs, and is a mile or a mile and a half from the other, nearly due south from Hot Spring. (R., 48-57.)

R. R. RICHARDSON testified on behalf of the defendants that he went to the Babocómari in 1881 or 1882 and has lived in that part of the country ever since; that Camp Crittenden is the headquarters of one of his cattle ranches; that the spring there is a large warm spring, and they ditch it down the valley about eight miles for irrigating; that there is another spring about a mile and a half farther south and about three times as large as this one, it being a warm spring also; that they run the water about seven miles down the valley and use it for irrigating; that the warm springs run down the Sonoita and the watershed between the Sonoita and Babocómari is broken. There are four or five families living in the Babocómari claiming under Government entries. Witness states he is acquainted with the foothills of the Santa Rita mountains and has ridden all over them after cattle. There are quite a number of *cañons* coming down from them toward Camp Crittenden, and there are cottonwood trees in almost all of these *cañons*, but he does not know of a cottonwood tree in any of these *cañons* having a distinctive mark on it; that the watershed from the Santa Rita mountains runs down all the *cañons* from the mountains, and there are a great many *cañons* there for miles. Witness states that he does not know the distance between the west center monument of the Roskruge map and the west center

monument—does not know anything about the monuments. Witness states that it is about thirty miles from Camp Crittenden to Fairbanks in a rough guess.

On cross-examination, witness states that not all of the *cañons* coming down from the Santa Rita mountains had cottonwood trees in them, but most of them had; does not know the *cañon* where the little cottonwood is, as mentioned in the survey, but he has been all over all of them. States that he has been on top of the hill southwest of the Monkey Spring and found piles of stone in a great many places there, and looking from the top of the hill he could see quite a number of cottonwood trees in different *cañons*, and does not remember noticing any one particularly. (R., 59, 60.)

Then followed the offers of documentary evidence as appears in the record.

#### **BRIEF AND ARGUMENT.**

Many of the questions involved in this case have been discussed at length in the Government's briefs already filed in certain Arizona cases on the present docket, and appreciating that another discussion of the Government's position with regard to them would accomplish no end save wearying the attention of the court, I content myself, specifically citing each case wherein the proposition is discussed, with the statement that

THIS GRANT IS VOID FOR THE FOLLOWING REASONS:

1. Because the title was not lawfully and regularly derived from the Government of Spain or Mexico, or from any of the states of the republic of Mexico having

lawful authority to make grants of land. (See brief in *United States v. Coe*, No. 8, and *United States v. Maish et al.*, No. 297.)

2. Because it has not been approved, ratified, or confirmed by any official or official body of the Mexican republic having authority to bind the nation in that behalf. (See brief in *Ainsa v. United States*, No. 27.)

3. Because it has been declared invalid by the supreme treaty-making power of the Mexican republic. (See Santa Ana's decrees, Nov. 25, 1853—Reynolds, 324, et seq. See briefs in *United States v. Coe*, No. 8, and *United States v. Maish et al.*, No. 297.)

4. Because it had not been located at the date of the treaty of 1853, and consequently falls within the principle announced by this court in *Ainsa v. United States*, 161 U. S., 208.

5. Because of uncertainty in the description of the land attempted to be granted.

This brief will be devoted to a discussion of the last two propositions mentioned.

I deem it proper to notice the statements and conclusions made by counsel for appellant in his original brief; the sources from which he derived his information can not be relied upon, as I shall endeavor to show.

Counsel is mistaken in his proposition (Brief, p. 25) that "as late as May, 1875, the right of the states to the vacant lands within their limits was expressly declared by articles 5, 6, and 7 of an act of congress of the Union. (See Hall's Mexican Law, secs. 528 to 535.)" The citation from Mr. Hall does not sustain the contention.

The law of May 31, 1875, does not declare, in any of its articles, either inferentially or expressly, "*the right of the states to the vacant lands within their limits*," "Articles 5, 6, and 7," or rather sections 5, 6, and 7 of article 1, are (Orozco, Vol. II, p. 805):

ART. 1. The executive is authorized, until a law is enacted which shall definitely determine and regulate everything relating to colonization, to make it [colonization] effective by his direct action and by means of contracts with private enterprises upon the following bases:

\* \* \* \* \*

V. That of appointing and putting in operation the exploring commissions authorized by section 26 of the present appropriation law, in order to obtain colonizable lands, with the requisites which they must have of survey, delimitation, valuation, and description.

VI. That of obtaining, for habilitating a tract of public land with the requisites which the preceding section requires, by him who fulfills these requisites the third part of said land or of its value, provided he does it with due authorization.

VII. That this authorization shall be of the exclusive jurisdiction of said executive, who shall not deny it [authorization] to a state, which claims it with respect to a tract of land situated within its territory, the authorizations which may be granted to the states and to private individuals being without effect and without right of prerogation, when, three months after they have been obtained, the corresponding operations have not been undertaken.

In a footnote to this section VII, Mr. Orozco says:

That these *authorizations* shall be of the exclusive jurisdiction of the federal executive. *Hoc dicit.*

By this law is proclaimed, with the greatest clearness, the principle that the public lands are the property of the federation and NOT of the states, a matter we will occupy ourselves in carefully demonstrating in title 3, book 3, of this work.

Mr. Orozco draws from this law a conclusion diametrically opposite to that drawn from it by counsel, but he was not trying to sustain an invalid land grant.

Referring to page 3 of his brief, the "*ranchos*" granted to the Elias family were NOT the "*first industrial barriers that were formed between the Apaches \* \* \* and the southern and civilized settlements in the central and southern parts of Sonora.*" There were "*presidios*" and settlements at San Bernardino, established in 1821; at the town of Fronteras, established during the last century; at San Pedro, adjoining these very lands; at Sonoita, which was within four or five miles south of Babocómari and was an ancient town or mission and located again in 1821; San Rafael de la Zanja, to the southwest of Babocómari; the mission of Tumacacori and Calabazas, established about 1696; the San Javier mission, and the military garrison of Tubac, directly west of and within a few miles of Babocómari and Tucson.

The settlement at Tucson is one of the oldest in the United States, perhaps the second oldest, ranking after San Augustine, Florida, and probably before Santa Fé, New Mexico. History does not show that it was ever abandoned. The presidio of Tubac is also more than a century old and but a few miles from Babocómari. Both of them are many, many years older than Babocómari or the members of the Elias family who acquired that grant, and were garrisoned by federal troops at that time.



The Eliases say nothing about Indians in their application, nor is anything said about them except in the granting clause (R., 78, line 39), where what is said is nothing more than the formula usual at that time, because the country was subject to Indian raids at times.

The surveyor of the Babocómari was not disturbed by Indians nor were the surveyors of the San Rafael del Valle or San Juan de las Boquillas, also denounced and surveyed for the Eliases. (Appellant's brief, p. 4.)

Attached to this brief as Appendix I is a certified copy of the translation of the *testimonio*, made by Mr. Hopkins for the surveyor-general, which was originally filed in this case by appellant, but discovering that the government was preparing a vigorous attack upon the same, he withdrew it (R., 11 and 13) and substituted another now appearing in the record, which is correct, except the omission to translate the word "*perito*" contained in the notes of the survey (Spanish [R., 64, 65, 66], and translation [R., 73, 74, 75].)

Counsel was not satisfied with the condition of the record on the question of survey and wrote Mr. Hopkins in relation to the matter; his reply is embodied in appellant's original brief, pages 7-11.

Mr. Hopkins, in this communication, as he did in his official translation for the surveyor-general of Arizona, displays an overzeal and careless regard for the correctness of his translation, and his assumed knowledge of Spanish and Mexican law and history has no foundation in fact. He charges the surveyor of this grant with ignorance, "*since he sometimes writes 'oeste' with a 'u,'*

thus, 'ueste,' and 'este' with a 'r,' thus, 'veste.'" (Appellant's brief, p. 9.) These words can all be found in any respectable Spanish or Spanish-English dictionary just as written in this *expediente*. See, for instance, Salvá, Paris, 1879; Velazquez or Lopez and Bensley, Spanish-English Dictionary, 1882, or any other. The spelling of these words with an "o" is entirely modern. The surveyor did not write "este" with a "r." It was "ueste," he wrote with a "r," and he wrote it correctly, too. The "r" was formerly used entirely in place of the "u." The "*Nuevo Diccionario de la Lengua Castellana*," New Dictionary of the Castillian Language, Paris, 1860, under the letter "U," says:

U, feminine. The twenty-third letter of our alphabet and the fifth vowel in almost all alphabets derived from the Latin. Formerly it was confounded in manuscript with consonant "V" and both letters have preserved the same name in our language; that is, one is called "vowel u" and the other "consonant u."

The *alcalde*, Alejandro Franco, did NOT make the survey of the Babocómari. He was commissioned to do so. (R., 73, line 3.) The survey was made by the "skillful surveyor, citizen José Maria Caballero" (R., 73, line 47), "*por el perito agrimensor ciudadano José Maria Caballero*." (R., 64, line 22.) The word "PERITO" in the original Spanish, meaning "expert" or "skillful," is omitted in the translation. By whom "citizen José Maria Caballero" was appointed or by what authority he made the survey, nowhere appears; but being a "skillful surveyor," it must be assumed that he was NOT ignorant and knew how to use the instrument with which he was provided.

The *alcalde*, Alejandro Franco, could not even write his name, and it was written for him by Ramón Romero. (R., 73, line 31, and elsewhere.)

The surveyor took no "*backsights on the lines he was running*," nor does he anywhere say so. Mr. Hopkins does NOT claim, among his other accomplishments, to be an "expert" or "skillful" surveyor as was citizen Caballero. What the surveyor, "*citizen José Maria Caballero*," attempted to do, and that much is perfectly apparent to any modern surveyor, except, perhaps, Mr. Roskrige and translator Hopkins, was to describe the two compass points through which his line ran—that is, to read his compass at both ends of the needle. Thus, if he had said, in his second course, *northwest quarter north-northwest to southeast quarter south-southeast*, the description would have been perfectly intelligible then, now, or at any other time, and the line so described would have been that marked on the sketch "A" herein with the letters "d," "A," and "f," a single straight line through three points.

Mr. Hopkins again errs when he says the surveyor "*took no bearings*" from the initial point, where "*he only placed a cross*." In contradiction to Mr. Hopkins, the *expediente* says he "*had a cross monument placed*," and from it "*took a course*" or bearing. (R., 73, last line.) And when he returned to the center (R., 75, line 10) he took another course ("*rumbo*," here translated "*direction*"), to survey the other portion of the grant. How is it possible that he "*took no bearings*" when "*he measured one hundred cords on a given course to a*

natural landmark?" Mr. Hopkins has forgotten that "bearing" and "course" are synonymous.

The initial point CAN NOT be "*ascertained by retracing this line of one hundred cords to the initial point,*" because that course is not intelligible, as will be hereinafter explained. Being at that "*natural landmark,*" how is one to know in what direction, on what course, or on what bearing to go to find the initial point?

There is not a grant in all Arizona in which the survey is not better described than in this one. In either of the two others, made upon the same petition to the Elias family, at the same time as this one, the San Rafael del Valle or the San Juan de las Boquillas, the descriptions of the survey are infinitely better than in this one.

These descriptions are precise, definite, clear, plain, and intelligible, and the survey was not made by a "*skillful surveyor*" either, but by the "*constitutional police alcalde of the presidio of Santa Cruz.*"

The "*boundary landmarks*" in this grant were not "*established by bearings to other objects.*" No "*bearings*" were taken to objects of any kind, AS AN ACT ANTECEDENT, but a course was observed from the compass and a line run which terminated at or near or upon a natural object, and that object is mentioned and described merely as *a witness* to the monument, which, it is said, was placed there. The description in this grant is identical in form and substance with those in all other grants in Arizona, except here the description is indefinite and uncertain as to the courses. There is nothing in the *expediente* to show that, after a monument was placed, a "*bearing*" was taken

from that monument to any other point whatever, natural or artificial.

In all other land grants in Arizona, as a rule, so-called monuments (piles of stone) are found in the general directions described in the survey, though always at much greater distances.

It is true the field notes of the survey were approved by the *promotor-fiscal*. It was his duty to examine them and see that they were correct, or have that done by some one who was competent to do so. He was very particular in the Nogales de Elias case. (*Ainsa v. United States*, 161 U. S., 208.) He, the surveyor, and the appraisers assumed that the survey was correct, for they appraised *eight sitios*, and *eight sitios* were paid for. It is to be observed here that the Babocómari was denounced by *two persons only* and the title was issued to *two persons only*, Ygnacio Elias and Eulalia Elias, in the proportion of *four sitios to each*, which was the amount allowed them by article 21 of the state law of May 20, 1825, No. 30 (Reynolds, 130), and that they asked for no more, and could acquire no more lawfully, and did not attempt to in this case.

(Appellant's brief, p. 56.)

Mr. Flipper has NOT been misled by incorrect translations nor by the illiteracy of the original surveyor, whom the *expediente* describes as a "*skillful surveyor*." Mr. Flipper is both a competent and skillful surveyor and a Spanish scholar. It was the surveyor-general of Arizona who was misled by the incorrect translation of

this *expediente* made by his expert, Mr. R. O. Hopkins, an employee of his office.

Mr. Roskruge testified (R., 27) that he had a copy of the *expediente* certified by the surveyor-general. It was a certified copy of the translation made by R. O. Hopkins, the same or another certified copy of which was filed with the papers in this case and withdrawn (R., 11-13.) That part of that translation relating to the survey is as follows, the italics being mine:

Whereupon the surveyor proceeded to the measurement of the lands in question, the surveyor being the citizen José Marie Caballero, who, after setting his compass, took the direction *east northeast a quarter east and west southwest a quarter west, fore and back sights*, where a cross was placed as a landmark, \* \* \* and from this point, the rough character of the country continuing, in order to run the head line of the survey, and squaring the tract surveyed, the surveyor and myself estimated *northwest a quarter north northwest and southeast a quarter south southeast, fore and back sights*, sixty cords as far as a cottonwood standing in a little valley at the foot of the said Sierra of Santa Rita, and for the completion of the head line, in the opposite direction of *south southwest a quarter southwest and north northeast a quarter northeast, fore and back sights*, we estimated forty cords, which terminated on a hill. \* \* \* We returned to the central monument \* \* \* the line was run *west south southwest and east northeast, fore and back sights*, \* \* \* terminating on a rocky hill, \* \* \* at which place the compass was set by the surveyor, and for the purpose of squaring the survey a line was run at right angles with the last line, the line being run in the

direction south southwest a quarter southwest and north northeast, fore and back sights, \* \* \* and returning to the center of the measurement of this head line in the direction opposite of north northwest a quarter northwest and south southeast a quarter southeast. \* \* \*

If we compare this translation (Appendix I) with the translation in the record (R., 73-76) we shall find :

HOPKINS: *East north EAST a quarter EAST and west south west a quarter west, fore and back sights.*

RECORD: *East north WEST a quarter WEST and west south west a quarter west.*

HOPKINS: *North west a quarter north north west and south east a quarter south south EAST, fore and back sights.*

RECORD: *North west a quarter north north west and east a quarter south south WEST.*

HOPKINS: *South south west a quarter south WEST and north north EAST a quarter north EAST, fore and back sights.*

RECORD: *South south west a quarter south EAST and north north WEST a quarter north WEST.*

HOPKINS: *West south SOUTH WEST and east north EAST, fore and back sights.*

RECORD: *West south EAST and east north WEST.*

HOPKINS: *South south west a quarter south WEST and north north EAST a quarter north EAST, fore and back sights.*

RECORD: *South south west a quarter south EAST and north north WEST a quarter north WEST.*

HOPKINS: *North north west a quarter north west and south south EAST a quarter south east.*

RECORD: *North north west a quarter north west and south south WEST a quarter south east.*

This comparison shows conclusively that Mr. Hopkins changed the courses of the original so as to make them possible and made no explanation of the fact. Is it any wonder the surveyor-general found no difficulty in considering these calls of this claim? The courses correctly translated as they appear in the original are NOT intelligible:

The words "fore and back sights" occur five times in this translation, while they do not occur at all in the original Spanish, nor are there any words there that could be so translated.

The "*central point of the survey*" was not the "*ciénega of Babocómari*," but a point "*in front of it*" (R., 75.); in what direction or how far away is not stated, nor is there anything in all the *expediente* to assist in determining the place where the starting point is located.

I do not think Mr. Flipper was misled by any inexcusable translation by Mr. Hopkins, but understood exactly what he was saying, and I will undertake to demonstrate the fact.

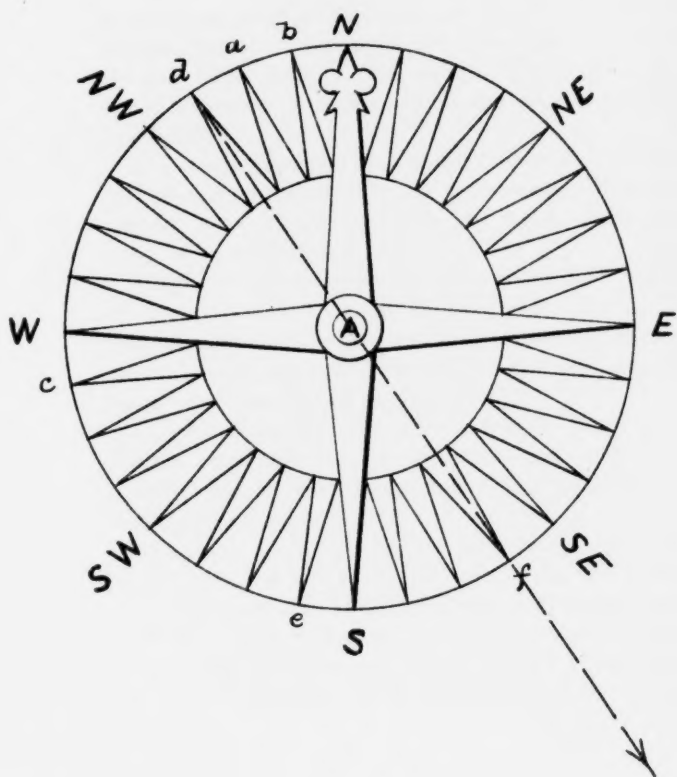
Analyzing the courses in this testimonio, it says (R., 73, line 24), "*at said place*," etc., that is, at San Pedro, which is twenty-five miles southeast from Babocómari. It is to be observed that no center or starting point is described or mentioned, except "*at said place*," until we reach R., 75, line 7, where it is described as "*the cen-*



A



"A"



ter monument \* \* \* in front of the cienega of San Ignacio Baboçmari." The center is not described as being AT the cienega or NEAR it, but "in front of" it. (R., 75). How far was it from this cienega and in what direction? Only Hopkins and Roskruge seem to have been able to answer this question.

The first course, "*east northwest quarter east to the west southwest quarter west*" (R., 73, line 48), in Spanish, "*Este Norueste cuarto al Este para veste Surueste cuarto al oeste*" (R., 64, line 25), is an impossible course. The first half of it means that the point is one quarter east of "*east northwest*," wherever that may be. To go from "*east*" to "*northwest*" it is necessary to pass the "*north*" cardinal point of the compass. We might suppose "*east northwest*" to be at *a* on the accompanying figure "A;" then "*east northwest quarter east*" would be at *b*. The second half of this course means that the point is one quarter "*west*" from "*west southwest*," that is at *c*. Now, we have the starting point where the instrument stands, or the center of the instrument marked *A*, "*east northwest quarter east*," marked *b*, and "*west southwest quarter west*," marked *c*, three points at the vertices of a triangle through which the surveyor says he ran a single straight line, one hundred cords long. Is it not a manifest absurdity? It is utterly impossible to tell in what direction he actually ran the line, and "*a small valley near some bald hills*" is a very indefinite description, for on this same line there were other "*valleys*" and "*hills*" which, however, are here translated "*hillocks*" from the same word, "*lomas*," the line itself terminating "*at the*

foot of a bald hill (*loma pelona*)," three hundred cords or three leagues from the first-mentioned "bald hills (*lomas pelonas*)."

What can be meant by "a hillock (*loma*) which looks south-southwest?" It is possible for a person to look "south-southwest" or in any other direction from any hill. Moreover, the description calls this line "the side of the three sitios for cattle." It was in fact not the "side" but the center line, and was equivalent in length to the "side" of four sitios, being four hundred cords or four leagues long. At the termination of this line it is said: "I ordered a corner monument placed." It was not a CORNER MONUMENT but a LINE MONUMENT in one side of the grant—the end side.

The "skillful surveyor" is now at this line monument, wherever it may be, and he undertakes to run the end line perpendicular to the other line he had just run and described, that is, "northwest quarter north-northwest to the southeast quarter south-southwest" (R., 74, line 47), in Spanish, "Norueste cuarto al Nornorueste para Sureste cuarto al Sursurueste" (R., 65, line 24). "Northwest quarter north-northwest" is at the point marked *d*. To go from "southeast" to "south-southwest" necessitates passing the "south" cardinal point of the compass, and makes this course indefinite and uncertain, though it is not difficult to guess at what was meant. The other part of this end line, forty cords long, was estimated "in the opposite direction, south-southwest quarter southeast to the north-northwest quarter northwest" (R., 74, last line), to "a hill-ock (*loma*), in Spanish, "Sursurueste cuarto al Sueste

*para el Nornorueste cuarto at Norueste*" (R., 65, lines 28-31). First, it is plain that the line of sixty cords was estimated TOWARD the Santa Rita mountains. The Babocómari grant as claimed lies nearly due east of those mountains. The sixty-cord line being run TOWARD the Santa Ritas, was run WESTERLY. The forty-cord line "*in the opposite direction*" must have been run EASTERLY, yet this wonderful "*skillful surveyor*" says he ran it "*to the north-northwest quarter northwest.*"

To analyze this course, "*south-southwest quarter south-east*" means undoubtedly a quarter from "*south-southwest*" towards "*southeast*;" that is, at the point marked *e*, though the notation is not correct. "*North-northwest quarter northwest*" is the point marked *d*. Here again we have three points, the vertices of a triangle, through which to run a single straight line, the points being *A*, *d*, and *e*. The sixty-cord line ran from *D* to *f*. The forty-cord line "*in the opposite direction*" from the same starting point should have run from *f* to *d* and not from *e* through *A* to *d*, which is impossible.

This completed the center line to one end line from the starting point and that end line itself. One-fourth of the first or center line, or one hundred cords, was run October 5, 1828 (R., 73, line 43), and the other three-fourths, or three hundred cords, and the end line of one hundred cords were run on the 21st of the same month and year, although the *expediente* also says the latter were "*surveyed the day before*" (R., 75, line 5).

On the same 21st day of October, 1828, the surveyor and his party returned "*to the center monument \* \* \* in*

front of the *cienea* of San Ignacio Babocómari" and ran "west-southeast to east-northwest" (R., 75, line 10), in Spanish, "*Ueste Sueste para Este Norueste*" (R., 65, line 41), which "terminated upon some hillocks (*lomas*) near the *punta de agua*" (R., 75, lines 10, 11, and 12), and continued the line twenty-six cords farther and then three hundred farther to the end line, where he built a monument he calls a corner. It was not a CORNER, but a monument in the END line.

It is absolutely impossible to tell or even to guess what this course means. "West-southeast" means somewhere between "west" and "southeast," somewhere in a range of one hundred and thirty-five degrees at the "south" end of the needle. Likewise, "east-northwest" means somewhere between "east" and "northwest," somewhere in a range of one hundred and thirty-five degrees at the "north" end of the needle. It is therefore impossible to determine in what direction this line was run from the starting point "in front of the *cienea* of San Ignacio Babocómari." (R., 75.)

Being at the termination of this line last run and described, wherever that termination was, the "skillful surveyor" set up his instrument and ran forty cords at right angles to the foregoing line (R., 75, line 47), "south-southwest quarter southeast to the north-northwest quarter northwest," in Spanish "*Sursurueste cuarto al Sueste para el Nornorueste cuarto al Norueste*" (R., 66, line 37.) "South-southwest quarter southeast" is found at e, although the notation is incorrect. It should be "quarter southrest," but it is fair to presume that that was what was meant.

"North-northwest quarter northwest" is at *d*. Here again we have three points at the vertices of a triangle, *c*, *A*, and *d*, through which to pass a single straight line, a manifest impossibility.

From this same end-line monument the surveyor ran sixty cords in the "opposite direction," "north-northwest quarter northwest to the south-southwest quarter southeast" (R., 76, line 1), in Spanish "*Nornorueste cuarto al Norueste para el Sursurueste cuarto al Sueste*" (R., 66, line 45.) This course is exactly the opposite of the preceding one as described, and runs from *d* to *A* and to *c*, although the notation is again incorrect, in that "quarter southeast" was intended to be "quarter southwest." It is equally absurd, because a single straight line, a course, can not run through three points at the vertices of a triangle.

Owing to the statement made by counsel in his original brief (p. 66) as to the testimony of Mr. Flipper in relation to the *expediente* being on stamped paper, I instructed Mr. Will. M. Tipton, special agent of the Department of Justice, to examine the same during his visit to Hermosillo last February, and the result of his examination is contained in his report, attached to this brief as Appendix II.

Although it appears that various leaves of this paper have been indorsed several times for that purpose, none of these indorsements were signed by the official authorized to habilitate the same, and hence the *expediente* was not on properly stamped paper.

Mr. Flipper nowhere stated in his testimony "that the proceedings in Elias's grant were not on stamped

*paper,*" and he is nowhere contradicted. He did, however, state positively that they were on stamped paper (R., 49), as follows:

Q. Now, as to the construction of the instrument at Hermosillo, describe the kind of paper it is on; also the dates; whether stamped paper; and if so, of what dates.

A. I can read from my notes?

Q. You may use them to refresh your memory.

A. First and second sheets of paper, two reales, for the years 1822 and 1823, seal third. The third and fourth pages are on Mexican paper, seal fourth, for the years 1824 and 1825. Fifth and sixth sheets on paper of Fernando VII, for the years 1811 and 1812. The seventh sheet on Mexican paper, fourth seal, for the years 1824 and 1825. Eighth, ninth, tenth, and eleventh sheets and twelfth sheet on paper of Fernando VII, fourth seal, for the years 1811 and 1812. Thirteenth sheet, Mexican paper, fourth seal, for the years 1824 and 1825. Fourteenth sheet on Fernando VII paper, for the years 1811 and 1812. Fifteenth, sixteenth, seventeenth, and eighteenth sheets on Mexican paper of the fourth seal, and nineteenth sheet on Mexican paper of the fourth seal, for 1829 and 1830. That is all the paper that was used.

The testimony of Mr. Flipper shows that those proceedings were on stamped paper, of dates from 1811 to 1830, and that fourteen sheets of that paper, of dates from 1811 to 1825, *had never been habilitated*—that is, made good for the years 1827, 1828, and 1829, in which they were used—and that five sheets were paper of the proper years and needed no habilitation, notwithstanding



the telegram of the treasurer-general of Sonora, Mr. Victor Aguilar. (R., 80 and 81.)

Counsel in his brief (p. 67) has made, as I think, an unjustifiable attack upon Mr. Flipper and his work, and has sought to put words into his mouth which he never uttered. He was probably misled by following Mr. Hopkins' letter and his translation, as well as his opinion as a lawyer contained in the "Public Domain." There were no "*reverse lines*" or "*back sights*" in this survey. The surveyor, who was NOT the *Alcalde* Alejandro Franco, but a "*skillful surveyor, citizen Jose Maria Caballero,*" stated NO "*reverse directions of the courses*" in his report. The "*courses taken and recorded by the surveyor*" would NOT "*lead to the landmarks and the monuments if they were followed,*" because it is impossible to determine what those courses were.

Mr. Flipper did NOT mean by saying that "*some of the calls are impossible*" that "*some of the reverse courses, backsightings, are in directions that are tangent to the courses as they are stated in the field notes,*" because it is impossible to know what those courses were, therefore impossible to know whether they were "*tangents*" or not, and there absolutely were NO "*reverse courses*" or "*backsightings,*" except in the imagination of Mr. Hopkins, who is not a surveyor and not familiar with the technical terms of surveying. "*Reverse courses*" and "*backsightings*" existed only in his imagination and nowhere in the *expediente*.

"*Courses*" are right lines and it is not conceivable how they can have "*tangents.*" I am forced to believe that counsel is much better lawyer than mathematician,

although he has been led off on a "tangent" by Mr. Hopkins (according to his understanding of the term). The figure (between pp. 6 and 7 of appellant's brief) agrees with the courses as translated by Mr. Hopkins, but I do not believe that anyone is likely to conclude that Mr. Hopkins's translation can be relied upon, and it is evident that he is responsible for the mistake of the surveyor-general in recommending the grant for confirmation by congress, by making an incorrect translation of the *testimonio*.

Mr. Roskrige, who attempted to resurvey this grant with the *testimonio* before him, states (R., 37) that the original surveyors never measured an inch of the tract, and I am inclined to think that he was correct, as I have been of the opinion that such was the case in nearly all of these grants.

The area claimed in the petition filed in the court below is one hundred and twenty-eight thousand acres, which are equal to twenty-nine and one-half *sitios*, although only eight *sitios* were attempted to be granted, which equal thirty-four thousand seven hundred and seven and sixty-eight one-hundredth acres. Under the state law of May 20, 1825, article 21 (Reynolds, 130), each new breeder was limited to FOUR *sitios*, and it is now contended that this grant was lawfully and regularly made for *twenty-nine and one-half sitios*. No attempt was made to locate the eight *sitios* within the outboundaries of the grant. By following the description contained in the *testimonio*, without arbitrarily disregarding the field-notes therein, the grant can not be located, and is impos-

sible of location if any integrity is to be ascribed to the recitals contained in the instrument.

The discussion herein had, I submit, fully sustains the fourth and fifth grounds upon which the grant should be rejected, as stated at the commencement of this brief.

I respectfully submit that the judgment of the court below should be affirmed.

JOHN K. RICHARDS,  
*Solicitor-General.*

MATTHEW G. REYNOLDS,  
*Special Assistant to the Attorney-General.*



## APPENDIX I.

---

### COPY OF TRANSLATION OF ORIGINAL TITLE PAPERS.

Title of grant of eight square leagues of land for the raising of stock, including the place named San Ignacio del Babacomori, in the jurisdiction of the presidio of Santa Cruz, issued by the treasurer-general of Sonora, in favor of the citizen Ignacco Elias and Dona Eulalia Elias, the first a resident of Rayon and the second of Arizpe.

For the year 1831 and 1832.

Second seal, 12 reales. [L. S.]

José Maria Mendoza, treasurer-general of the state of Sonora (free, sovereign, and independent).

Whereas, Article 11 of the sovereign decree number 70 of the general congress of the union, dated the 4th of August, 1824, concedes to the state the revenues which in said law are not reserved by the federal government, and one of these being the lands of the respective districts to which they belong, for the concession of which laws the honorable constituent congress of the state of Sonora and Sinaloa united, passed the law of the 20th of May, 1825, No. 30, and the successive legislatures passed other laws and decrees in relation to the matter, and the citizens Ignacco and Eulalia Elias having made formal denouncement before this treasurer's office of the lands named, San Ignacio del Babacomori, situated in the jurisdiction of the presidio of Santa Cruz, the said petitioners being the first, a citizen of the villa of Rayon,

and the second of this capital; the said denouncement was admitted according to law on the 1st of July, 1827, and the writing of denouncement and other proceedings in relation thereto are as follows:

*To the treasurer-general.*

We, Ignaceo Elias and Eulalia Elias, present ourselves before your honor, respectfully representing: That, needing a tract of land for our stock, we denounce, in company with Don Rafael Elias, captain Ignaceo Elias, and Don Nepomucino Feliz, the vacant tract of land adjoining the rancho of San Ignaceo del Babacomori, situated in the jurisdiction of the presidio of Santa Cruz, as far as the place of Tres Alamos, obligating ourselves to pay to the nation the corresponding tax, with all other matters that justice may require until the title and confirmation thereof shall be obtained. Wherefore, your honor will be pleased to consider the vacant tract referred to, petitioned for, wherefore we pray your honor to be pleased to order as we have prayed for, in which we will receive favor. Arizpe, March 12, 1827. In the absence of, and at the request of, Don Ignaceo Elias, and Joaquin Elias, Eulalia Elias. Cosala, July 1, 1827. The alcalde of Santa Cruz will proceed in the matter under the authority which is conferred on him, without prejudice to a third party who may have a better right, first citing the colindantes to the measurement, valuation, and publication for thirty days consecutively of the lands referred to in the denouncement, subject to the sovereign decree of the hon. constituent congress of the state, Number 30 of the 20th of May, 1825, and to the regulations accompanying the same, and when these proceedings shall have been taken let the same be transmitted to this treasurer's office, notifying the bidders to appear personally, or by their agents, at the sale to be made at said office after the required publication.

The treasurer-general of the state, Nicholas Maria Gajiola, thus be decreed and signed. Gajiola.

At the presidio of Santa Cruz, on the 5th day of the month of October, 1828. In view of the foregoing decree of the señor treasurer-general, let the same be complied with; wherefore for this purpose, with the citation of the interested party, the colindantes, the surveyor, and the necessary officers, which are to be named, I shall proceed to the hacienda of San Pedro for the purpose of measuring the lands petitioned for. The citizen Alejandro Franco, constitutional alcalde of the presidio of Santa Cruz, by this act, thus determined and signed, with the assisting witnesses, with whom I act ex officio, in the absence of a notary public, according to law. For Alejandro Franco, Ramon Romero, assistant; Ramon Romero, assistant, Franco Guana.

Wherefore the alcalde surveyor, after summoning the colindantes, proceeded to the appointment of counters, measurers, and markers, who were the citizens Lorenzo Sortellon, Andrez Mentoya, Pablo Elias, Antonio Campoy, and Monico Nerea, who accepted the appointments and made oath that they would discharge their several duties faithfully and legally; whereupon the measurements were made as follows:

At the same place, and on the same day, month, and year, for the purpose of proceeding with the measurement required, the interested party, the officers appointed, and the assisting witnesses being present, I ordered to be measured a cord of fifty veras, the ends of which were attached to lances, whereupon the surveyor proceeded to the measurement of the lands in question, the surveyor being the citizen José Maria Caballero, who, after setting his compass, took the direction east, northeast a quarter east and west, southwest a quarter west, fore and back sights, where a cross was placed as a landmark, and from said point there were measured and counted one hundred cordeles, the line terminating in a little valley, close to some bald hills, where I ordered a monument to be

placed; whereupon, it being late, I ordered the cord to be gathered up and that all parties return to rest until the day following, making this entry in the proceedings, which I sign with the assisting witnesses and the interested parties, who accompany me, to which I attest. For Alejandro Franco, Ramon Romero, Ignaceo Elias, Juan Nepomucino Feliz, Ignaceo Elias Gonzalez, José de Caballero, Lorenzo de Sortellon, for Antonio Campoya, Maunico Neero, Francisco Guano for Andrex Mentoya, and for me, Pablo Elias, assistant, Ramon Romero, assistant Francisco Guana.

At the place at which the second landmark was ordered to be placed, named valley of San Ignaceo del Babacomori, in company with the interested party, the surveyor, and the officers appointed for the purpose of continuing the measurement in the same direction, and on the 21st day of the same month and year, I caused the cord to be examined anew, and after the same had been examined, the extremities thereof were attached to lances, whereupon there were measured and counted in the same direction two hundred and fifty-three cords, the line terminating on the summit of a hill, which was now toward the south-southwest, at which point the measurement was suspended on account of the roughness of the country and the many and deep canadas encountered in the measurement, wherefore it was necessary for me and the surveyor to make an estimate of fifty-seven cords more for the purpose of completing the side of these square leagues, this estimate terminating at the hot spring in front of the Sierra of Santa Rita, at the foot of a bald hill, where I ordered a corner monument to be placed, which gives a view of the said sierra and the hot spring referred to; and from this point, the rough character of the country continuing, in order to run the head line of the survey and squaring the tract surveyed, the surveyor and myself estimated northwest a quarter north-north-



west and southeast a quarter south-southeast, fore and back sights, sixty cords as far as a cottonwood standing in a little valley at the foot of the said Sierra of Santa Rita; and for the completion of the headline in the opposite direction of south-southwest a quarter southwest and north-northeast a quarter northeast, fore and back sights, we estimated forty cords, which terminated on a hill on which there are some live oaks, at which point I ordered the corresponding monument to be placed, whereupon with these three square leagues and the measurement of the preceding day, the measurement of four square leagues was completed; and it being past midday, we returned to the central monument, as we had arrived in front of the monument of the Cienega del Babacomori; after causing the cord to be again examined, the extremities of which were attached to lances, the line was run west south-southwest and east northeast, fore and back sights, and there were measured and counted seventy-four cords, the line terminating on the summit of some hills close to the punta del la Agua, at which point, it being late, the measurements were concluded for the day, whereupon the party returned to rest; whereupon I made this entry in the proceedings, signing with the interested party, the surveyor, the officers appointed, and the assisting witnesses, to which I attest, for Alejandro Franco, Ramon Romero, Ignacio Elias, Juan Nepomucino Feliz, Lorenzo Sortellon; for Andres Mentoya and for me, Pablo Elias; for Antonio Campoya and Mariano Neero, Francisco Guana, Ignacio Elias Gonzales, José de Caballero; assistant Ramon Romero, assistant Franco Guana.

At the said place, on the 22d day of the same month and year, I, the judge commissioner, the interested party, the surveyor, and the other officers appointed, I caused the cord of fifty varas to be again examined and the course of the proceeding day, whereupon the same course there was measured and counted twenty-six cords for the purpose

of completing the one hundred cords for the side of one square league, and in the same direction, the line passing over several hills and canadas, and there were measured and counted three hundred cords, the last of which passed over a valley close to the Tanques of Ojo del Agua, terminating on a rocky hill, where I ordered a monument to be placed as a corner, which completed the side of the other four square leagues, at which place the compass was set by the surveyor, and for the purpose of squaring the survey a line was run at right angles with the last line, the line being run in the direction south-southwest a quarter southwest, and north-northeast a quarter northeast, fore and back sights; and there were measured and counted forty cords corresponding to the foregoing headline of the other four square leagues, the line terminating on some bald hills, where I ordered a landmark to be placed as a corner, and returning to the center of the measurement of this headline in the direction opposite of north-northwest a quarter northwest and south-southeast a quarter southeast there were measured and counted sixty cords for the purpose of completing the one hundred cords, the line terminating on the summit of a high hill; whereupon the measurements were concluded of the eight square leagues petitioned for by Don Ignacio Elias and his sister Da. Eulalia Elias, and with which they were satisfied, they being informed that in due time they were to mark the boundaries of the tract by placing their monuments of lime and rough stones as required by law. In witness whereof he signed with me, and all those who knew how to write, together with the assisting witnesses with whom I had in the absence of a notary public, according to law. For Alejandro Franco—Ramon Romero, Ignacio Elias, Lorenzo Sortellon; for Andrez Mentoya and for me, Pablo Elias; for Antonio Campoya and Mariano Neero—Francisco Gama, Juan Nepomucino Feliz, Ignacio Elias Gonzales, José de Caballero, assistant Ramon Romero, assistant Francisco Gama.

Whereupon the alcalde proceeded to the corresponding valuation of the land, appointing intelligent experts for that purpose, who were the citizens Pablo Elias and Ramon Romero, who made the valuation to the best of their practical knowledge, after taking the necessary oath, and in accordance with the regulations in relation thereto. They valued in the land in the sum of three hundred and eighty dollars, for the reason the six square leagues of the tract contained running water; this they valued at sixty dollars the square league, and two square leagues thereof being arid, they valued at ten dollars the square league of this valuation. The alcalde offered the tract for sale, publishing the same for thirty consecutive days, writing purchasers to act from the 30th of October, 1828, until the 28th day of November of the same year, and, no purchasers appearing, the expediente was concluded, and on the 30th of November the same was sent to the treasurer's office for the necessary proceedings thereon until the sale, whereupon, with the decree of the 19th of December, the same was referred to the attorney-general for his report, whose report is as follows:

*To the treasurer-general:*

This expediente contains the measurement of eight square leagues of land, made by the alcalde of Santa Cruz, in the places of San Ignacio del Babacomori. I find nothing in the proceedings to prevent the adjudication of the land to the petitioners, if it is not that the quantity exceeds that mentioned in article 21 of the decree of the 20th of May, 1825. If your honor is satisfied as to this, I am of the opinion that the land may be sold to the denouncer, if there should be one willing to pay a higher price therefor. Alamos, December 20, 1828. Felipe Gil.

And the treasurer-general having been satisfied with the report of the attorney-general, the three public almonedas of the 22d, 23d, and 24th were made writing purchasers, and, none having come forward, the eight square leagues

of land in the place of San Ignacio del Babacomori were sold to the citizen Ignacio Elias and Da. Eulalia Elias, as is shown by the third almoneda, which is as follows:

*Third almoneda.*

In the said city of Concepcion, on the 24th day of the same month and year, at a meeting of the president and members of the said Junta de Almonedas, the third almoneda was ordered of the said lands, which was made in the same way as the foregoing, with the sole difference that it is stated at this time the land was to be peremptorily sold, and, the hour of noon having arrived without any purchasers appearing, the auctioneer proclaimed in a loud voice, "*Once, twice, three times; going, going, gone*—sold to Don Ignacio and Dona Eulalia Elias"—in which terms said act was concluded, and the land was publicly and solemnly sold to the interested parties for the sum of three hundred and eighty dollars, at which the tract was valued. In witness whereof, this entry was made in the proceedings, the same being signed by the senores president and members of the junta with the citizen Ignacio Elias, as agent of the interested parties, Gajiola Almada Gil, Ignacio Eleas Gonzales.

Whereupon the agent, captain Ignacio Eleas Gonzales, proceeded to deposit in the treasurer's office three hundred and eighty dollars, at which the said tract of land was valued and sold, as is shown by the following certificate:

Nicolas Maria Gajiola, treasurer-general of the state of the West, certifies that on folio 3 (reverse) of the manual of the treasury of the current year there is found the following entry, charged to grants of land, three hundred and eighty dollars, which was paid by captain Don Ignacio Elias Gonzales, in the name of Don Ignacio and Da. Eulalia Eleas, residents of Arizpe, for a grant of eight square leagues of land at the place named

San Ignaceo del Babacomori, in the jurisdiction of the presidio of Santa Cruz, valued at the sum stated, for which it was sold to the grantees without any opposition whatever in the Junta de Almonedas, collected on the 24th day of December last passed, three hundred and eighty dollars. Gajiola, Ignaceo Eleas Gonzales.

In witness whereof, I give this in Alamos, on the 8th day of January, 1829. Nicolas Maria Gajiola.

The foregoing certificate being added to the original expediente, in addition to the matter, the expediente was concluded with the necessary formalities, the same remaining in the article as a perpetual testimony.

Wherefore, in the exercise of the authority conceded to me by law, by these presents, and in the name of the free and sovereign state of Sonora, I grant in due form of law eight square leagues of land, comprising the place named San Ignaceo del Babacomori, situated in the jurisdiction of the presidio of Santa Cruz, in favor of the citizens Ignaceo Elias and Dona Eulalia Elias, to whom I concede said lands, as a sale, and with the quality and firmness established by law, for himself, his children, heirs, and successors, with all of its uses, customs, servitudes, woods, pastures, waters, watering places, and all other things thereto pertaining, under the positive condition that they have to keep the said tract of land occupied, the same not to be abandoned for any time whatever, and that if the same should be abandoned totally for the space of three years consecutively, and there should be someone else who should denounce the said land, in such event, if the land should be declared vacant, it may be adjudicated to the highest bidder, excepting always the cases in which abandonment is caused by a notorious invasion of enemies, and only for the period of such invasion, requiring, as I strictly require, that the said citizens Ignaceo Elias and Dona Eulalia Elias, and their heirs, that the grantees are to subject themselves to the

limits and boundaries of the land as set out in the proceedings of measurement, observing and giving exact fulfillment to the law No. 30, of the 20th of May, 1825, which imposes the obligation upon the grantees to place upon the boundaries of the land the required monuments, under a penalty of twenty-five dollars, which shall be exacted from them, to be paid into the public treasury; and I order and command the judges and local authorities who are at present in office, or who may hereafter be, in the district of this capital that in the administration of justice, and in compliance with the laws, they shall not permit the interested parties nor their heirs to be molested in the peaceable possession of said land, but that they shall take care that they shall be protected therein, since the same belongs to them by just and legal title, under which they may freely sell, exchange, donate, transfer, cede, and alienate the same at their election, as their own absolute property. In testimony whereof, I issue the present title in favor of the citizens Ignàcio and Dona Eulalia Elias and their successors, for their security, the same being requested in the corresponding book of toma de razon.

Given in the capital of Arizpe, on the 25th day of December 1832, authorized and signed by me and sealed with the seal of this treasurer's office, before the undersigned assisting witnesses in the absence of a notary public, there being none.

[L. s.]

JOSÉ MARIA MENDOZA.

Asst.:

BARTOLA MARANDA.

Asst.:

LOUIS CARRANCO.

This title remains registered on folio 11 of the corresponding book in the office of the treasurer-general.

[Rubrica, Jose Ma. Mendoza.]

Fourth seal 6½ cents (L. s.) for the year 1831 and 1832, No. 762, in as much as the interested parties to whom was sold the lands on the 18th of April and on the 24th day of December 1828, the laws of San Rafael del Valle, San Juan de las Boquillas of Nogales and San Ignaceo del Babacomori, situated in the jurisdiction of the presedio of Santa Cruz; the first to Rafael Elias, the second to Ignaceo Elias Gonzales and Nepomucino Feliz, and the third to Ignaceo Elias and Dona Eulalia Elias, have shown that they have not been guilty of neglect in failing to obtain the original titles for said lands since they have solicited the same from the treasurer's office since before the 10th of July 1830, you shall proceed to issue said titles gratis in conformity with the requirements of decree No. 27 of the 11th of August, 1831. God and Liberty. Arizpe, April 29, 1833. Ignaceo de Bustamente, Lucas Rodriguez.

Officeal 1.

Arizpe, May 8, 1883.

JOSÉ MARIA MENDOZA.

---

OFFICE OF THE SURVEYOR-GENERAL,

*Tucson, Ariz., September 17, 1897.*

I hereby certify that the foregoing eleven pages of typewritten matter is a correct copy of the paper it purports to be a transcript of on file in this office, as found in Volume I, pages 154 to 165 inclusive, of the Journal of Private Land Claims for the district of Arizona

[SEAL.]

GEORGE CHRIST,

*United States Surveyor-General for Arizona.*

## APPENDIX II.

---

SANTA FE, N. MEX., September 21, 1897.

Hon. MATT. G. REYNOLDS,  
U. S. Attorney, C. P. L. C.

SIR: I made a careful examination of the *expediente* of the San Ignacio del Babocómari grant in the archives at Hermosillo, Sonora, Mexico, on the 16th of February, 1897, in relation to its being on stamped paper, with the following result:

The title leaf is on common unstamped paper.

Leaf 1 is on Spanish paper of the reign of Ferdinand VII, 3rd stamp, 2 *reals* [25 cts.], for 1822-1823. It bears printed statements that it had been habilitated three times, the last time by the state of the Occident for 1827 and 1828.

Leaf 2 is the same as leaf 1.

Leaf 3 is on Mexican paper of the 4th stamp, one *cuartilla* [3 1-8 cts.], for 1824-1825. It bears the printed statement that it was habilitated by the state of the Occident for 1827-1828.

Leaf 4 is the same as leaf 3.

Leaf 5 is on Spanish paper of the reign of Ferdinand VII, 4th stamp, one *cuartilla* [3½ cts.], for the year 1811 and 1812. It bears printed statements that it had been habilitated four times, the latest time by the state of the Occident for 1827-1828.

Leaf 6 is the same as leaf 5.



Leaf 7 is on Mexican paper, *4th stamp, one cuartilla* [ $3\frac{1}{8}$  cts.], for the year 1824-1825. It bears the printed statement that it had been habilitated once by the state of the Occident for 1827-1828.

Leaves 8, 9, and 10 are the same as leaf 5.

Leaves 11 and 12 are on Spanish paper of the reign of Ferdinand VII, *4th stamp, one cuartilla* [ $3\frac{1}{8}$  cts.], for 1811-1812, and has been habilitated twice, once for 1816-1817, and once a *4th stamp official* of the republic of Mexico, without date.

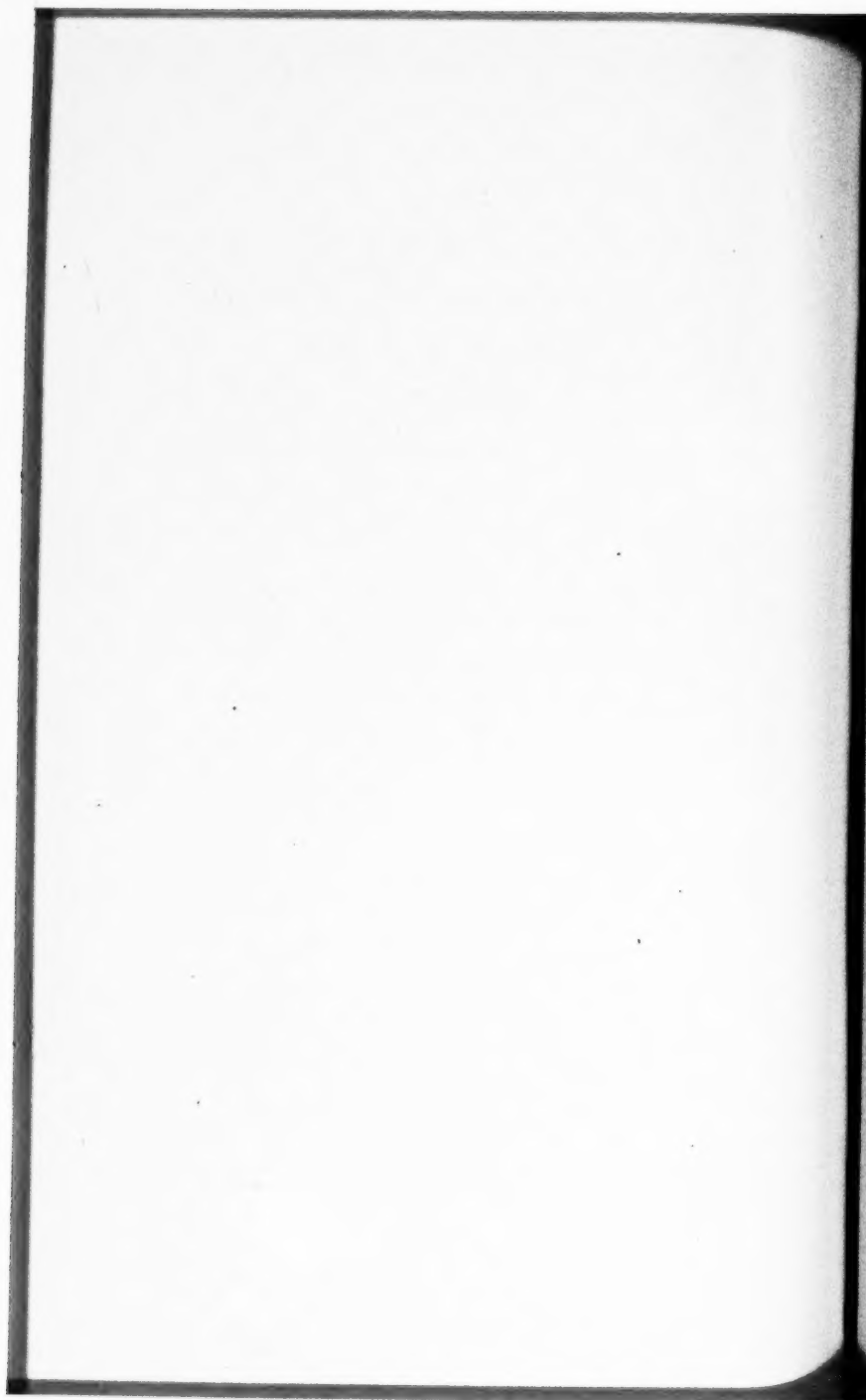
Leaf 13 is on Mexican paper, *4th stamp, one cuartilla* [ $3\frac{1}{8}$  cts.], for 1824-1825, and has been habilitated once by the state of the Occident for 1827-1828.

Leaf 14 is the same as leaf 5.

Leaves 15, 16, 17, and 18 are the same as leaf 13.

Leaf 19 is on paper of the *4th stamp, one cuartilla* [ $3\frac{1}{8}$  cts.], of the state of the Occident for 1829 and 1830.

WILL. M. TIPTON,  
*Special Agent, Dept. of Justice.*



N<sup>o</sup>. 30.

MAR 24 1898  
JAMES H. McKENNEY,  
CLERK

Brief of Atty. Gen<sup>l</sup>. (Richards &  
Reynolds) for U. S. (by  
Filed Mar. 24, 1898.

---

**In the Supreme Court of the United States.**

OCTOBER TERM, 1897.

---

ROBERT PERRIN, APPELLANT, }  
v. } No. 30.  
THE UNITED STATES.

---

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.  
RABOONARI GRANT IN ARIZONA.

---

**BRIEF ON BEHALF OF THE UNITED STATES  
ON THE TRANSLATION OF ARTICLE VI OF THE GADSDEN  
TREATY, SIGNED ON DECEMBER 30, 1853, AND RATIFI-  
CATIONS THEREOF EXCHANGED ON JUNE 30, 1854. (U. S.  
STAT. L., VOL. 10, PAGE 1061.)**

---



# In the Supreme Court of the United States.

OCTOBER TERM, 1897.

---

ROBERT PERRIN, APPELLANT,	} No. 30.
v.	
THE UNITED STATES.	

---

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.  
BABOCÓMARI GRANT IN ARIZONA.

---

BRIEF ON BEHALF OF THE UNITED STATES  
ON THE TRANSLATION OF ARTICLE VI OF THE GADSDEN  
TREATY, SIGNED ON DECEMBER 30, 1853, AND RATIFI-  
CATIONS THEREOF EXCHANGED ON JUNE 30, 1854. (U. S.  
STAT. L., VOL. 10, PAGE 1031.)

Appellant's counsel, as a *dernier ressort*, have assumed a novel attitude as to the proper translation of the sixth article of the Gadsden Treaty, in opposition to which it is deemed prudent to present this brief. On pages 50-51 of the original brief, filed by Byron Waters, esq., in this case, it is stated :

Both the English and Spanish copies of this treaty are originals.

\* \* \* \* \*

The contradiction or mistranslation occurs in Article VI of the treaty.

\*            \*            \*            \*

It is apparent that the word "*located*" should have been omitted from the English copy and the word "*inscribed*" used instead.

The contention insisted upon by counsel is that the Supreme Court of the United States, the constitutional head of one of the coordinate branches of the Government, shall eliminate from this treaty the word "*located*," contained in the English version thereof—the express stipulation of the treaty-making power, composed of the heads of the other two coordinate branches of the Government—and substitute therefor the word "*inscribed*." The novelty of such a proposition will at once attract attention.

The reformation of a treaty which this Government has entered into with another Government is an attribute of a power belonging exclusively to its political branch, and can not be constitutionally delegated to the judicial branch. The most that can be said of the power of the judicial branch of this Government in respect thereof is that in interpreting its provisions as the law of the land, where any inconsistencies may appear between the two versions of such a treaty, it becomes its duty to consistently reconcile and harmonize them, if possible. Counsel in this case are evidently seeking to render such a reconciliation impossible. It shall be the purpose of the Government's counsel to reconcile both versions thereof and to demonstrate that there is in fact no inconsistency, contradiction, or repugnance between the terms used in each version.

The sixth article of the Gadsden Treaty must be intended to stipulate expressly the agreement of the parties, and, as said by Chief Justice Marshall in the case of *United States v. Percheman* (7 Peters, 51-87), in discussing the eighth article of the treaty with Spain of 1819—

If the English and the Spanish parts can, without violence, be made to agree, that construction which establishes this conformity ought to prevail.

Referring to the eighth article of that treaty, the same jurist said, "this article is apparently introduced on the part of Spain," etc. (*Ibid.*, p. 87.)

The sixth article of the Gadsden Treaty is apparently introduced on the part of the United States, and hence it would naturally follow that the Spanish version was originally translated from the English, and that the word "*located*" was translated by its Spanish equivalent "*inscritas*." The poverty of the Spanish language has often been the subject of observation and comment by translators.

It is also contended by counsel, on page 50 of his brief, before referred to, that to Mr. Luis Mendez and Y. Sepulveda "belongs the credit of first calling attention to the patent and most important contradiction which exists between the English and Spanish copies of the treaty mentioned." In this he is evidently mistaken. It will be found that on June 21, 1881, this matter was called to the attention of Mr. Guillermo H. Robinson in the El Soporí Case, in Arizona, in the investigation made at that time by Surveyor-General John Wasson (see Senate Ex. Doc. No. 93, Forty-eighth Congress, first session, page 75), and Mr. Robinson, who is an eminent

Mexican lawyer and has held important judicial positions, both Federal and State, in Sonora, Mexico, testified as follows:

Question. Please state what the Spanish words occurring in the Gadsden Treaty as follows, viz, "*inscritas y debidamente registradas en los archivos*," signify in legal practice and procedure in Mexico.

Answer. "*Inscritas y debidamente registradas en los archivos*" have been properly translated "*located and duly recorded in the archives.*"

While the competency or reliability of any of the experts consulted by counsel for appellants as to the proper translation of the sixth article of this treaty is not questioned, yet it is very much doubted whether the entire question has been submitted to them, so as to enable them to determine whether it is fairly possible to harmonize both versions of the treaty, retaining every word in full force in each without doing violence to either. This question has been submitted to Mr. Henry O. Flipper, special agent of the Department of Justice, and expert, with that object in mind, and his report thereon is herewith respectfully submitted.

JOHN K. RICHARDS,

*Solicitor-General.*

MATTHEW G. REYNOLDS,

*Special Assistant to the Attorney-General.*



Hon. MATT. G. REYNOLDS,  
*Special Assistant to the Attorney-General.*

SIR: I have the honor to submit the following report of my investigation as to the supposed conflict and inconsistency in the two versions of the sixth article of the Gadsden Treaty, and especially of the two clauses "*located and duly recorded*," and "*inscritas y debidamente registradas*," and more particularly the equivalency of the words "*located*" in the English version and "*inscritas*" in the Spanish version, so as to retain the word "*located*" in the English version and the word "*inscritas*" in the Spanish version, and whether these words may be retained in both versions without doing violence to either, instead of striking out of the English version the word "*located*" and substituting therefor the word "*inscribed*" as the proper equivalent of the word "*inscritas*."

The two versions of the treaty are as follows:

“ARTICULO VI.

“No se considerarán válidas, ni se reconocerán por los Estados Unidos ningunas concesiones de tierras en el territorio cedido por el artículo primero de este tratado, de fecha subsecuente al día veinte y cinco de Septiembre en que el ministro y signatario de este tratado por parte de los Estados Unidos propuso al Gobierno de México dirimir la cuestion de límites; ni tampoco se respetarán, ni considerarán como obligatorias ningunas concesiones hechas con anterioridad que no hayan sido inscritas y debidamente registradas en los archivos de México.

“ARTICLE VI.

“No grants of land within the territory ceded by the first article of this treaty bearing date subsequent to the

day—twenty-fifth of September—when the minister and subscriber to this treaty on the part of the United States proposed to the Government of Mexico to terminate the question of boundary will be considered valid or be recognized by the United States, or will any grants made previously be respected or be considered as obligatory which have not been located and duly recorded in the archives of Mexico. (U. S. Stat. L., Vol. X, 1035.)

The Spanish word "*inscritas*" is the irregular past participle of the verb "*inscribir*." It is plural in number and feminine in gender, and qualifies the word "*concesiones*," which here means grants.

Grammar of the Royal Academy of Spain, Paris, 1882, page 137.

Grammar of the Royal Academy of Spain, Madrid, 1894, page 174.

Grammars of the Spanish Language, Velazquez, New York, 1849, p. 455; Robertson, New York, 1861, p. 125; De Tornos, New York, 1867, p. 274; New Dictionary of the Castillian Language by a Society of Literati, Paris, 1860.

The orthography of the word as here given is modern. It so appears in the Grammar of Velazquez published in 1849, while in the Dictionary of Salvá, published in 1845, it is given "*inscripto*," thus following the original Latin "*inscriptus*."

As to the meaning of the word, I copy in full the following definitions of "*inscribir*," as given in the dictionaries herein enumerated:

# I

Dictionary of the Royal Academy of Spain, old edition, without date, probably 1780:

"Inscribir: v. a. Escribir, ó grabar letras, ú otra cosa en parte pública, para perpetuar la noticia de algun suceso.

"Inscribir: Geom. Formar una figura dentro de otra, de suerte que todos los ángulos de la inscripta toquen á los lados de aquella en que se inscribe."

## [Translation.]

"Inscribir: verb active. To write, or to engrave letters, or other things, in a public place, to perpetuate knowledge of some event.

"Inscribir: Geometry. To form one figure within another, so that all the angles of the one inscribed will touch the sides of that in which it is inscribed."

## II.

Dictionary of the Castillian Language by Terreros y Pando, Madrid, 1787:

"Inscribir, en la Jeometria, se toma por hacer un triángulo, ó polígono, dentro de un círculo, de modo que todos los ángulos toquen en el perímetro.

"Inscribir, gravar, esculpir."

## [Translation.]

"Inscribir, in geometry, is understood to mean to make a triangle, or polygon, within a circle, so that all the angles will touch the perimeter.

"Inscribir, to engrave, to carve."

## III.

New Dictionary of the Castillian language, by Salvá, Paris, 1845:

"Inscribir. a. Grabar letreros en metal, ó en piedra, para conservar la memoria de algun sugeto ó de algun hecho memorable. Geom. Formar una figura dentro de otra, de suerte que todos los vertices de los ángulos de la inscripta lleguen á la periferia de aquella en que se inscribe. (r. neol. Alistarse por escribirse en alguna lista)."

## [Translation.]

"Inscribir. active. To engrave letters in metal or stone, to preserve the memory of some individual or of

some memorable deed. *Geometry*: To form one figure within another so that all the vertices of the angles of the one inscribed will reach the periphery of the one in which it is inscribed. (reflexive. neologism. To enlist by signing some list)."

## IV.

English-Spanish and Spanish-English Dictionary, Velazquez, New York, 1852:

"Inscribir. v. a. 1.—To inscribe, to mark with writing. 2.—(Geom.) To inscribe, to draw a figure within another."

## V.

New Dictionary of the Castillian Language, by a Society of Literati, Paris, 1860:

"Inscribir. a. Grabar ó esculpir letreros en metal, piedra, etc. Geom. Formar ó trazar una figura dentro de otra, de suerte que todos los ángulos de la primera toquen en el periferio de la segunda. Si la figura fuese curva, deberá tener puntos de contacto con todos los lados ó planos de la circunscrita. Incluir en lista; sentar el nombre de uno entre los de otras personas, con un fin dado. Fig. Consignar por escrito."

## [Translation.]

"Inscribir, active. To engrave or carve letters in metal, stone, etc. *Geometry*. To form or trace one figure within another, so that all the angles of the first will touch the periphery of the second. If the figure inscribed should be a curved one, it must have points of contact with all the sides or planes of the one circumscribed. To include in a list; to enter one's name among those of other persons for a given purpose. Figuratively, to set down in writing."

## VI.

Latin-Spanish and Spanish-Latin Dictionary by Lopez.  
Paris, 1860:

"Inscribo. Cic. Inserir, escribir ó grabar en ó sobre, poner una inscripción ó un sobreescrito, intitular. Designar."

[Translation.]

"Inscribo, Cicero. To inscribe; to write or engrave in or upon; to put an inscription or superscription; to give a title to; to designate."

## VII.

National Dictionary, or Grand Classical Dictionary of the Spanish Language, by Don Ramón Joaquín Domínguez, 11th edition, Madrid, 1869.

"Inscribir, v. a. Grabar ó esculpir letreros en metal, piedra, etc. Geom. Formar ó trazar una figura dentro de otra, de suerte que todos los ángulos de la primera toquen en el periferio de la segunda. Si la figura inscrita fuese curva, deberá tener puntos de contacto con todos los lados ó planos de la circunscrita. Incluir en lista; sentar el nombre de uno entre los de otras personas, con un fin dado. Fig. Consignar por escrito."

[Translation.]

"Inscribir, verb, active. To engrave or carve letters in metal, stone, etc. Geometry: To form or trace one figure within another, so that all the angles of the first will touch the periphery of the second. If the figure inscribed is curved, it must have points of contact with all the sides or planes of the figure circumscribed. To include in a list; to enter one's name among those of other persons, for a given purpose. Figuratively: To set down in writing."

The above is the dictionary cited by counsel in his brief, page 51. It will be observed that it gives a geometrical meaning of the word "*to form or trace one figure within another.*" When a tract of land has been traced out in the great body of the public domain, it has been "*inscrito,*" or, in English, "*located.*" To trace one figure within another is to "*inscribe*" it, so that even the English word "*inscribe*" means to locate.

"*Inscrito*" does not mean "*in writing*;" its primitive meaning is "*carved*" or "*engraved.*" "*In writing*" to be correctly rendered in Spanish must be translated "*escrito.*"

### VIII.

General Etimological Dictionary of the Castillian Language, by Roque Barcia, Madrid, 1881:

"*Inscribir. Activo. Grabar letreros en metal ó en piedra, para conservar la memoria de algun sugeto ó algun hecho memorable. Geometria: Formar una figura dentro de otra, de suerte que toque en varios puntos al contorno de esta. Apuntar su nombre entre otros para un objeto determinado. Usase tambien como recíproco.*"

[Translation.]

"*Inscribir. Active. To engrave letters in metal or in stone, to preserve the memory of some individual or of some memorable deed. Geometry: To form one figure within another so that it will touch the perimeter of the latter at various points. To enter one's name among others for some specific purpose. It is also used as a reciprocal.*"

### IX.

English-Spanish and Spanish-English Dictionary, Lopez and Bensley, Paris, 1882:

"*Inscribir, a. To inscribe, to mark with writing. Geom. To inscribe, to draw a figure within another.*"

## X.

Dictionary of the Castillian Language, by Campano, Paris, 1883:

"Inscribir, a. Grabar letreros en metal ó en piedra para conservar la memoria de alguna persona ó hecho notable. Geogr. Formar una figura dentro de otra. Apuntar su nombre entre otros para un objeto determinado. Se usa tambien como recíproco."

[Translation.]

"Inscribir, active. To engrave letters in metal or in stone to preserve the memory of some person or of some notable deed. Geography. To form one figure within another. To enter one's name among others for a specific purpose. It is also used as a reciprocal."

## XI.

Dictionary of the Castillian Language, by the Royal Academy of Spain, 12th and last edition, Madrid, 1884:

"Inscribir (del. lat. *inscribere*), a. Grabar letreros en metal, piedra ú otra materia. Apuntar el nombre de una persona entre los de otras para un objeto determinado. U. t. e. r. For. Extender en los libros de registro de la propiedad los asientos definitivos de los títulos por los que se constituye, traslada ó extingue el dominio de los inmuebles, ó algun derecho real. Geom. Trazar una figura dentro de otra, de modo que, sin cortarse ni confundirse, estén ambas en contacto en varios de los puntos de sus perímetros."

[Translation.]

"Inscribir (from the Latin *inscribere*), active. To engrave letters in metal, stone or other material. To enter the name of a person among those of others for a

specific purpose. Used also as a reciprocal. Law. To spread on the books of the registry of property the formal entries of the titles by which the dominion of immovables or of some right real is constituted, transferred or extinguished. *Geometry*: To trace one figure within another, so that, without their conflicting or being uncertain, both may be in contact at various points of their perimeters."

## XII.

Dictionary of the Castillian Language, by Vera y Gonzalez, fifth edition, Madrid, 1890:

"Inscribir, a. Grabar letreros en metal ó en piedra para conservar la memoria de alguna persona ó hecho notable. Geogr. Formar una figura dentro de otra. Apuntar su nombre entre otros para un objeto determinado. Se usa tambien como recíproco."

[Translation.]

"Inscribir, active. To engrave letters in metal or in stone, to preserve the memory of some person or notable deed. Geography. To form one figure within another. To enter one's name among others for a specific purpose. It is also used as a reciprocal."

## XIII.

Latest Dictionary of the Castillian Language, by a society of writers, under the direction of Don Carlos de Ochoa, Paris, 1892:

"Inscribir, a. (Lat., *inscribere*.) Grabar ó esculpir letreros en metal, piedra, etc. Geom. Formar ó trazar una figura dentro de otra, de suerte que todos los ángulos de la primera toquen en el perímetro de la segunda. Si la figura inscrita fuese curva, deberá tener puntos de



contacto con todos los lados ó planos de la circunscrita; incluir en lista; sentar el nombre de uno entre los de otras personas, con un fin dado. Fig. Consignar por escrito."

[Translation.]

"Inscribir, active. (Latin, *inscribere*.) To engrave or carve letters in metal, stone, etc. Geometry. To form or trace one figure within another, so that all the angles of the first will touch the perimeter of the second. If the figure inscribed should be a curved one it must have points of contact with all the sides or planes of the one circumscribed. To include in a list; to enter one's name among those of other persons for a given purpose. Figuratively. To set down in writing."

Definitions are here quoted from thirteen different dictionaries, ranging in dates from 1780 to 1892. They all give practically the same definitions, and they are expressed almost in the same terms. It will be seen from them that the primitive meaning of "inscritas" is NOT "in writing," but "engraved" or "carved."

There is no better way of arriving at the meaning of words in use by foreigners than by consulting the dictionaries written by themselves in their own language. The Spanish dictionaries above quoted all give a *geometrical* meaning of the word "*inscribir*:"

"To form or trace one figure within another so that all the angles of the one shall touch the perimeter of the other."

A piece of land is "*inscrita*" when its perimeter or boundary has been formed or traced so that its sides and angles touch, and do not lap over, the perimeter or boundary of surrounding lands—that is, when it has been absolutely segregated from all other lands by tracing out and distinctively marking its corners and boundaries, or, as is said in English, "*located*."

I have been a close and diligent student of the Spanish language and literature for the past twenty-four years, and know of no Spanish word that so accurately expresses the meaning of "*located*," as used in the treaty, as does the word "*inscritas*." There are other words that partially express the same idea, such as "*medir*," to measure, to survey; "*deslindar*," to delimit; "*mensurar*," to survey, and "*apercar*," also to survey; but none of them convey the full force and effect of "*locate*."

The word "*located*," as used in the treaty, is technical and means—

"To locate a tract of public land by surveying it and defining its boundaries." (Century Dictionary.)

No dictionary of the Spanish language published prior to the date of the treaty, that I have been able to find, defines the word "*inscribir*" as meaning to inscribe in the sense of recording. See definitions marked I, II, III, and IV herein. It is a reasonable presumption that the word was not used with that meaning at that time (date of treaty), and that the meaning given in the definitions herein quoted is the meaning used in the 6th article of the treaty of 1853, and that "*inscritas*" and "*located*" are equivalents of each other, and that the word "*located*" should neither be omitted from the English copy nor be replaced by the word "*inscribed*;" but if the word "*inscribed*" [(Geom.) To draw within so as to meet yet not cut the boundaries. Webster's Int. Dict.] should be inserted in lieu of the word "*located*," it would still be the geometric equivalent of the word "*located*," although the specific word "*located*" is not in any of these definitions.

There are other words meaning "*to locate*," but in a sense totally different from that used in the treaty, such as "*poner*," "*localizar*," "*meter*," "*colocar*," etc. "*Poner*" and "*meter*" mean "*to locate*" in the sense of putting a thing in a place; "*localizar*," "*to locate*" in the sense of ascertaining where a thing is; and "*colocar*," "*to put*

something in the place or in the form corresponding to it; figuratively; to give, provide, or facilitate to someone an employment, position, office, or occupation more or less lucrative; to cause persons assembled in the same place to occupy their respective seats, places, etc., according to their class, category, dignity, seniority, right, etc., which each one should have." (See any of the dictionaries cited herein.)

None of these words, in any of their meanings, translate the technical meaning of the word "*locate*," as used in the treaty, and to have put any of them there would have been an unpardonable barbarism.

The meaning, "*duly recorded*," given to the words "*debidamente registradas*," can not be questioned, for such is the usual and common meaning of those words in Spanish and Mexican legal literature, both ancient and modern.

The system of recording documents, as practiced in the United States, was unknown to Spanish law or custom at the time of Mexican independence, and entirely unknown to Mexican law or custom from that time till 1870, when it was adopted and incorporated in the Civil Code promulgated in that year, and is now found in the Revised Code of 1884, articles 3188 et seq. The system in vogue in New Spain and in Mexico from the conquest till 1870 is fully shown by the Laws of the Indies, among others the following:

Law LX, Title XXIII, Book II:

"We order and command that notaries keep their registers (*registros*) sewed and that they attach their notarial sign to them at the end of every year, under penalty of thirty dollars for our exchequer."

Law XVI, Title VIII, Book V:

"Notaries shall keep and always have in their power registers (*registros*) of all the documents, decrees, and informations, and all other public instruments that shall be made and executed before them, notwithstanding the

parties whom they affect, or their attorneys, may request and consent that there be no registry (*registro*), under penalty of suspension from office for one year, and ten thousand maravedis for our exchequer."

To more fully explain how the record or register was made, the following is quoted from Escriche's Dictionary of Legislation and Jurisprudence, edition of 1876, pages 917 and 918.

"Public instrument— \* \* \*

"11th. \* \* \*

"II. We have examined the essential circumstances required in order that the instrument made by a notary may be held to be public and sufficient at law or otherwise; and we are now going to inquire into the classes or species and its effects. The public instrument is divided into three classes, that is, into *protocol or register (registro)*, *original*, and *transcript*.

"*Protocol or register (registro)* is the matrix-instrument itself signed by those who execute it and the notary and written in the form and with the circumstances we have indicated. This instrument is written in a bound book of paper of stamp fourth, which it is the duty of the notary to make every year for the purpose of writing the matrix-instruments as they are being executed; or rather, it is written like all others in booklets, or on loose sheets of said stamp, and at the end of the year they are all put together and bound, so as to form the book of protocols or registers (*registros*), which is also called simply register (*registro*) or protocol, with the understanding that whatever be the manner in which the book is made, it is the duty of the notary to put his notarial mark (*signo*) at the end to certify that during the year he has not authenticated more instruments than those contained therein, as has already been more fully stated in the explanation of the ninth circumstance.

"This instrument is called *protocol*, because it is the first or principal; *register (registro)*, because it remains

in the office of the notary, so that, in cases of doubt, copies may be compared with it; and *matrix*, because it is the fountain and origin from which are taken copies, transcripts, and *testimonios*, which parties in interest request; *laws 8 and 9, title 8, book 1 of the Fuero Real*. Thus it is that the notary is obligated to keep in his custody and preserve the books of registers (*registros*) and protocols, so that if, through his fault or negligence, they are lost or misplaced or not made, he will have to indemnify the parties in interest for the losses and damages that befall them, and incur, besides, a fine and suspension or deprivation of office, according to the greater or less extent and transcendancy of his carelessness or malevolence; *law 2, title 8, book 1 of the Fuero Real*, and *laws 4 and 6, title 23, book 10, New Compilation*; and yet the instrument once executed, he can not tear it or render it useless, or take it from the book, although those who execute it may so desire, under pretext of having revoked it or having rescinded the contract, since, as keeper of the public archives, which he is of the registers (*registros*) in his possession, he has no authority therefor, and the only thing it is his duty to do in such case is to put thereon the proper notice of revocation or rescission.

“The first copy which is taken literally and faithfully from the matrix-instrument, or the protocol or register (*registro*), by the same notary who made and authenticated it, is called *original* or *primordial*. Rigorously only the matrix-instrument should be called *original*, because every instrument that is not the matrix is no more than a copy, and because it is signed only by those who execute it and by the witnesses in their case; but, notwithstanding all this, the name of *original* is given, although with a certain sort of implication in the terms, to the first copy taken from the matrix, because it is

taken immediately from the fountain, because it is the origin of all the copies, duplicates, and transcripts taken from it without recurring to the protocol, and because it is given, subscribed, and marked (*signada*) by the same notary who made, completed, and authenticated the protocol.

"*Transcript, duplicate or copy, which is commonly called testimonio por concuerda* (compared *testimonio*), is the copy made for an exhibit, not from the matrix instrument, but from the original, or from that which serves as such, although it be not the first. The transcript may be authenticated by the same notary before whom the execution was made, or by another to whom the original instrument is exhibited or presented for the purpose; and it must be written on paper of the same stamp as the original, the first and last sheets being written on the stamped paper prescribed for the amount contained therein and the intermediate sheets on that of stamp fourth, except the transcripts which remain in judicial decrees (*autos*) for the return of any original instrument which had been presented therein as an exhibit, for these shall be written on paper of stamp fourth. *Royal order of January 12th, 1832.*

"III. The original instrument can not be given marked (*signada*) by the notary until the matrix has been written in the book of protocols, and it must be a faithful and exact copy of this latter, including the signatures of those who executed it and of the witnesses in their case, without the addition or omission of any word, except the signature at the end, under penalty of nullity, loss of office by the notary, disqualification to hold another, and payment of damages to the party. *Law I, title 23, book 10, New Compilation.*"

It will be observed that the word *registro* (register or registry) is used in the laws cited and in the extract from Escriche, and not the word "*inscripcion*," nor the corresponding participle "*inscrito*." "*Registro*" is the noun

corresponding to the past participle "*registradas*," used in the sixth article of the treaty.

The second *original*, or first copy, is given to the party, and a minute of the delivery, called *toma de razon*, is entered in another book kept for that purpose. The *matrix* and the *toma de razon*, taken together, constitute the record as known to Spanish law and custom up to independence, and to Mexican law and custom up to 1870. In Mexico, since 1870, the former system is still required, and in addition the party is required to take his second *original* to the office of public records in the district where he is domiciled or is carrying on business, and have it inscribed (*inscrito*), or recorded, by being copied *verbatim et literatim* in a book kept there for the purpose.

The use of the word "*inscribir*" with the meaning "to record" is modern, and of the thirteen dictionaries cited herein that meaning is found only in the Dictionary of the Royal Academy, twelfth and last edition, Madrid, 1884, No. XI herein.

Article 9 of the regulations of November 21, 1828 (Reynolds, 141), provides that "Entries (*toma de razon*) of all the applications presented and grants made shall be kept in a book intended for the purpose."

The Sonora State law of July 11, 1834, article 38, section 8 (Reynolds, 186), makes it the duty of the auditor of the treasury "to correctly keep the book of *toma de razon* of every title, commission, or order of payment the Government shall issue, and to order the first officer to literally copy their contents with due separation."

Article 31 of the decree of December 4, 1846 (Reynolds, 263), provides that "Every decree of sale shall be signed by the board and the *toma de razon* thereof shall be made in the general treasury of the federation."

I investigated this question in 1887 and again in 1894, and have made a recent investigation, and I am convinced

that the expressions in question correctly translate each other, and there can be no other rational conclusion than that "*inscritas y debidamente registradas*" and "*located and duly recorded*" are equivalents of each other, word for word, in the order in which they are written in the treaty, and that no other interpretation does or can harmonize the two versions of this article of the treaty.

HENRY O. FLIPPER,  
*Special Agent, Department of Justice,  
United States Court of Private Land Claims.*



to 30.

MAR 26 1898  
JAMES H. MCKENNEY,  
CLE

Received of the  
for

of the

of the

of the

of the

of the

of the

**In the Supreme Court of the United States.**

OCTOBER TERM, 1897.

---

ROBERT PERRIN, APPELLANT, }  
v. } No. 30.  
THE UNITED STATES.

---

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.  
BABOCÓMARI GRANT IN ARIZONA.

---

BRIEF IN REPLY ON BEHALF OF THE UNITED  
STATES—STATE GRANTS, AND SANTA ANNA  
DECREES.

---

I.

STATE GRANTS.

It is believed that none of the States of the Republic of Mexico in their constitutions asserted claim to the vacant public lands, either by right of original ownership or by virtue of the national law of August 4, 1824, classifying the revenues.

Counsel assert that various States claimed such lands by the express language of their constitutions, and name the following :

- Con. Texas and Coahuila, art. 10.
- Con. State of Mexico, art. 10.
- Con. Nuevo Leon, arts. 2, 3, 4.
- Con. Puebla, art. 14.
- Con. San Luis Potosi, arts. 2, 3.
- Con. Chihuahua, art. 36, secs. 2-7.
- Con. Sonora.

An examination of the constitution of Coahuila and Texas, probably the most aggressive of all, fails to disclose any such claim, nor did it pretend to exercise any power over the vacant lands by virtue of the national law of classification of revenues of August 4, 1824.

We had occasion to examine the constitution of Sonora in the case of the *United States v. Coe*, No. 8 (pp. 33 and 34, Reply Brief of U. S.). The translation of the two articles in that constitution as contained in the brief was taken from the printed translation furnished by appellee, and it was contended that article 293 did not apply to vacant public lands. The words "*landed property*" should not be in the translation, and there is nothing in the Spanish text that can be translated "*landed property*." A correct translation of this article is found in Reynolds's *S. and M. Laws*, p. 138. It will appear that the words "*landed property*" have been interpolated in the text.

The constitution, in defining the attributes of the congress of the state, says, article 109, section 20 (*Ibid.*, 137):

To make regulations for colonization in conformity with the laws.

The contention by various counsel as to the provisions of the Sonora constitution is extravagant, to say the least, and they must have been misled by translators.

A careful examination of the Spanish of the various constitutions of the States of Mexico to which we have had access fails to sustain in any way the assertion made in argument and in briefs filed by counsel in various cases involving the State grant question. (Coleccion de Constituciones, Tomo III, has been left with the clerk for the convenience of the court.)

The constitutions we have examined are the following :

Con. Coahuila and Texas, laws of Coahuila and Texas, p. 313 to 343.

Con. Occidente (Sonora and Sinaloa), Coleccion de Constituciones, p. 96.

Con. Tabasco, *ibid.*, p. 158.

Con. Tamaulipas, *ibid.*, p. 228.

Con. Vera Cruz, *ibid.*, p. 246.

Con. Xalisco, *ibid.*, p. 322.

Con. Yucatan, *ibid.*, p. 395.

Con. Zacatecas, *ibid.*, p. 479.

The constitution of Texas, in defining its revenues, does not in any manner assert that the vacant lands are a part of the revenue system. See laws of Coahuila and Texas, p. 340, arts. 203 to 210. (This book has been left with the clerk for convenience of the court.) Nor did Texas ever attempt to dispose of the vacant lands for other purposes than colonization, as is clearly shown by the memorial from the congress of the State to the National Congress. (*Ibid.* 301.)

The law of March 14, 1835, authorizing the disposition of 400 *sitios*, was annulled, which brought forth the memorial before referred to. The failure of the national congress to take favorable action on this memorial was one of the causes which led to the rebellion of Texas and her ultimate independence. The other states were also in rebellion at the same time, but Texas alone succeeded.

### COLONIZATION UNDER STATE LAWS.

The laws of Sonora of May 20, 1825, and July 11, 1834, were not passed under the powers delegated by the third article of the national colonization law of August 18, 1824, and were not an attempted exercise of the power declared in the constitution as one of the attributes of its congress (Reynolds, 137), and was inconsistent with the entire policy of colonization as declared by the national colonization law of August 18, 1824.

The whole policy of colonization would have been defeated by such State laws claiming title and the *jus disponendi* under the law of August 4, 1824, *ad libitum*. (See testimony of Mr. Castañeda, record case of *United States v. Coe*, No. 8, p. 15.) It will be noted that Mr. Castañeda does not give the same translation of article 293 of the Constitution of Sonora as contained in the briefs of counsel.

The original power of colonization delegated to the States by the third article of the colonization law of August 18, 1824, was withdrawn as to the border and littoral States by the law of April 25, 1835. (Reynolds, 193.) Article 2 of this law is general in terms and applies to Sonora, and is as follows :

ART. 2. In the exercise of the powers the General Government reserved to itself in article 7 of said law of August 18, 1824, the border and littoral

States are prohibited from alienating their public lands for colonization thereon until the rules they shall observe in doing so are established.

This law indicates that the National Government not only refused to recognize any dispositions other than for colonization, but prohibited even that disposition on the part of the border and littoral States until the National Government should establish rules to be observed by such States, and Sonora, as well as Texas, was both a littoral and border State.

The ninth article of the law of August 18, 1824 (Reynolds, 122), by requiring that preference should be given Mexican citizens, removes all ground for the contention that the national law was for the benefit of foreigners.

### **SANTA ANNA DECREES AND DECREES ANNULING THEM.**

See historical sketch, Reynolds S. and M. Laws, pp. 38 to 41, which concludes: "from these laws it will clearly be seen that the Mexican lawmakers believed that, under the Central System, a valid grant could not be made without the express authority of the supreme government, while, under the Federal System, a valid grant could only be made under the provisions of the colonization law of August 18, 1824." And it may be observed additionally, that the alienations for colonization in the border and littoral States could not lawfully be made except under rules and regulations provided therefor by the General Government. See article 4, law of August 18, 1824 (Reynolds, 121), and the law of April 25, 1835, articles 2 and 3 (Ibid., 193), referring to article 4 of the law of August 18, 1824.

It has been suggested that Santa Anna did not represent the Mexican Nation in the negotiations for the sale of the territory acquired by this country under the Gadsden Purchase, and that he was hampered by constitutional restrictions, requiring the legislative branch of the Government to concur in his action. On March 17, 1853, Santa Anna was declared elected President under the modified plan of Jalisco, which plan virtually provided for the election of a Dictator. (Reynolds, 39; also 312.)



On April 22 of that year a new basis for the Government was promulgated, by which all legislative bodies throughout Mexico were dissolved, and Santa Anna assumed supreme power. This is what is commonly called the beginning of the second epoch of the Central System of Government. The constitution which was expected to be formed was not promulgated till March 15, 1857 (*Ibid.*, 317), which is the constitution now in force in Mexico, with slight modifications, relating principally to the reelection of the President.

In the exercise of dictatorial powers, assumed on the 23d of April, 1853, and submitted to by the people, on September 21, 1853, he again abolished the States and reestablished the departments. (*Ibid.*, 39 and 323.)

While exercising such dictatorial powers, with all legislative bodies throughout Mexico dissolved, and pending the formation of a new constitution, he promulgated his decree of November 25, 1853, and on December 16, 1853, during the negotiations for the land acquired under the Gadsden Purchase, he declared himself perpetual Dictator. (*Ibid.*, 325.)

Under this condition of affairs the treaty was signed by his representatives, and by the representative of the United States on December 30, 1853, and it is respectfully submitted that the various decrees promulgated by Santa Anna and the succeeding governments of Mexico fix beyond question the status of the title of the public lands that were attempted to be disposed of by the intendants, commissaries-general, States, and departments through their respective officers.

They were the construction of the lawfulness and regularity of all such grants in Mexico. And while those decrees promulgated subsequently to the treaty are not binding upon the United States, those promulgated prior thereto are binding. Yet those promulgated after the treaty should not be without persuasive force, and when construed in connection with those promulgated prior to the treaty on the same subject-matter, justify the conclusion that none of the State grants are entitled to recognition under the thirteenth section of the act of March 3, 1891, creating the Court of Private Land Claims.

Respectfully submitted.

JOHN K. RICHARDS,  
*Solicitor-General.*

MATTHEW G. REYNOLDS,  
*Special Assistant to Attorney-General.*

# In the Supreme Court of the United States.

OCTOBER TERM, 1897.

---

ROBERT PERRIN, APPELLANT,	} No. 30.
<i>v.</i>	
THE UNITED STATES.	

---

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.  
BABOCÓMARI GRANT IN ARIZONA.

---

TRANSLATION, ON BEHALF OF THE UNITED STATES, OF THE "EXPEDIENTE" OF THE BABOCÓMARI GRANT FILED BY APPELLANT, AND A MEMORANDUM OF INACCURACIES IN APPELLANT'S TRANSLATION.

---

Counsel for appellant having filed a translation of a certified copy of the *expediente* of the San Ignacio del Babocómari grant, as found in the archives at Hermosillo, it is deemed proper to file a translation thereof on behalf of the Government and to call attention to several material inaccuracies in appellant's translation. A few

of these inaccuracies clearly indicate the danger of relying upon translations of various proceedings for the disposition of lands attempted to be taken under the laws of Spain, Mexico, or any of the States thereof, when made by translators who do not understand or observe the technical use of words and phrases as contained and defined in the various laws.

Respectfully submitted.

JOHN K. RICHARDS,

*Solicitor-General.*

MATTHEW G. REYNOLDS,

*Special Assistant to the Attorney-General.*

## MEMORANDUM OF INACCURACIES IN APPELLANT'S TRANSLATION.

1. On title-page the words "*sitios para cria de ganado mayor y caballada*" are not translated except by the words "live-stock ranch," placed in parenthesis. These Spanish words mean "tracts for breeding large cattle and horses," and have in the laws of Sonora a technical application comprehending a precise quantity of land authorized to be granted for such purposes.

2. The word "*expediente*" is translated "record" wherever it occurs. The "*expediente*" is only a part of the record and should be translated "*proceedings*."

The words "*sign manual*" occur 158 times in the translation for the Spanish "*rúbrica*." This latter word should be translated "*rubric*" (*Century Dict.*) or "*paraph*."

The word "*habilitado*" just preceding the petition is rendered by "*qualified*." As applied to the revival of stamped paper, it should be "*habilitated*."

The words "*suburban property*" in the petition are given as the translation of "*bienes de campo*." These words mean "*live stock*."

The word "*comprensión*" in the petition is translated "*limits*." Its correct meaning is "*jurisdiction*."

The word "*registrado*," in the petition, is translated "*recorded*." It should be "*registered*," in the sense of entering or filing upon a piece of land under the land laws.

In the decree appointing a surveyor the words "*alcalde de policia*" have been translated "*chief of police.*" It should be "*police justice.*" The "*alcalde*" is a judicial and administrative officer, with a chief of police under him.

In the same decree "*constituyente*" has been translated by "*constitutional.*" It should be "*constituent.*" The two terms are quite distinct.

In the same decree and elsewhere the word "*remate*" is translated by "*auction.*" It should be "*final sale.*"

"*Almonedas*" in the same decree is translated "*auctions,*" whereas its correct meaning is "*offers to sell.*" It occurs in the "*expediente*" a number of times and is inaccurately translated "*auctions.*"

In the minute in which the surveyor accepts his appointment the word "*oficiales*" is translated "*officials.*" It should be "*assistants,*" as they were in no sense "*officials,*" but subordinate helpers for the occasion, such as chainmen, etc.

In the same minute the words "*testigos de asistencia*" have been translated "*assistants.*" They should be translated "*attending witnesses.*" "*Asistencia*" does not mean "*assistants,*" but the act of being present.

In the minute setting out the appointment and swearing of assistants the word "*rodmen*" is given as the translation of "*apuntadores.*" It should be "*recorders,*" persons who attend the surveyor and write down the field notes of the survey as it progresses.

In the survey itself the word "*viento*" is translated by "*angle.*" It means "*wind,*" literally, but in this place its meaning is "*course*" or "*direction.*"

In the survey "*este norueste*" are translated "*east northeast*," instead of "*east northwest*."

"*A monument in the shape of a cross*" is given as the translation of "*mojonera cruz*." It should be "*cross monument*," i. e., a monument placed where two lines cross, without regard to the shape of the monument, in contradistinction to a "*mojonera esquina*," a "*corner monument*."

In the same place "*sesenta*," meaning "*sixty*," is translated "*seventy*."

In the survey "*cuadra*" is translated "*square*." It means being perpendicular or at right angles to.

In the designation of the courses, such as "*southeast by north-northwest*" for "*sueste para nornorueste*," the word "*para*," wherever it occurs, is translated "*by*." It should be translated "*to*," as points on the opposite side of the compass are being described.

In the survey also the word "*ultimos*" is translated "*latter*." It should be "*last few*."

In the appraisal of the land surveyed "*por receptoria*" are translated "*through commission*." They should be translated by "*ex officio*."

In the reference to the "*promotor fiscal*," these words are translated by "*comptroller*." They mean "*fiscal attorney*," who was merely the legal adviser of the treasurer-general of the State.

In the certificate of payment for the land the word "*cargo*" is translated by "*charged*." It should be translated by "*receipts*."

**GOVERNMENT'S TRANSLATION OF CERTIFIED  
COPY OF THE EXPEDIENTE OF THE SAN YGNA-  
CIO DEL BABOCÓMARI GRANT FILED BY APPEL-  
LANTS.**

[TITLE PAGE.]

Copy of the proceedings and steps taken in the survey of eight *sitios* for breeding large cattle and horses at places called "San Ignacio del Babocómari," in behalf of citizen Ignacio Elias and Doña Eulalia Elias.

(Seal reading: Office of the treasurer-general, State of Sonora, February 8, 1898.)

(A fifty-cent stamp duly cancelled).

Citizen Treasurer-General:

I, Ignacio Bonillas, a resident of Nogales, and temporarily in this capital, appear before you and state: That, as appears by the letter which I annex in the original, Mr. Robert Perrin, owner of the land known as "San Ignacio del Babocómari," situate in the Territory of Arizona, United States of the North, needs a certified copy of the proceedings relating to said land existing in the archives of the treasury under your worthy charge, and said Mr. Perrin having authorized me to ask for said copy in his name, I pray you to be pleased to order that the corresponding copy be issued to me for the purposes that may suit the party in interest. I make the necessary protestations.

Hermosillo, February 5, 1898.

IGNACIO BONILLAS. [Rubric.]



Received on the seventh instant, and, as asked for, let the copy requested be issued.

V. AGUILAR. [Rubric.]

Stamp third. 2 reals. Years 1822 and 1823. Habilitated. The constitution sworn to by the King on March 9, 1820. Habilitated by the State of the Occident for the years 1827 and 1828.

A stamp which reads: "Habilitated by the Republic of Mexico for the years 1824 and 1825."

Mr. Treasurer-General:

Don Ignacio Elias and Doña Eulalia Elias appear before your lordship in due form and say: That, needing land for live stock, they denounce, in company with Don Rafael Elias, Captain Don Ignacio Elias, and Don Nepomuceno Felix, the public land bounded by the ranch of San Pedro, in the jurisdiction of Santa Cruz, as far as the place of Tres Alamos, binding ourselves to pay to the nation the fees corresponding to it, together with whatever else that may be just, until we acquire title by grant and confirmation, to which end you will be pleased to hold said public land as registered and denounced. Therefore, we pray you to be pleased to order done as we request, by which we shall receive grace.

Arispe, March 12, 1827.

By consent and request of Don Ignacio Elias.

JOAQUIN ELIAS. [Rubric.]

EULALIA ELIAS. [Rubric.]

COSALA, July 1, 1827.

The police justice of Santa Cruz will proceed, by authority which is conferred on him therefor, without prejudice to a third party who represents a better right, and after citation of coterminous owners, to the survey, valuation, and publication, for thirty consecutive days, of the lands mentioned in the foregoing denouncement, following in everything the sovereign decree of the honorable constituent congress of the State, No. 30, of May 20, 1825, and the regulations accompanying it, and, when these proceedings have been carried out, he will forward them to this office of the treasurer, summoning the bidders that appear to present themselves in person or by attorney at the final sale that must be held in said office after the customary three public offers of sale.

The treasurer-general of the State, Nicolas Maria Gaxiola, thus decreed and signed it.

GAXIOLA. [Rubric].

At the presidio of Santa Cruz, and on the fifth day of the month of October, of eighteen hundred and twenty-eight.

In view of the foregoing decree of the treasurer-general, let the provisions of said decree dated July 1, 1827, be complied with, and to that end, upon citation of the parties in interest, coterminous owners, expert surveyor, and other necessary assistants, who must be appointed, go myself to the *hacienda* of San Pedro for the purpose of proceeding to the survey of the *sitios* the parties in interest desire. Citizen Alexandro Franco, constitutional *alcalde* of the presidio of Santa Cruz, by

this decree so ordered and signed it, with attending witnesses, with whom he acts *ex officio* in default of a notary according to law.

For Alejandro Franco :

RAMON ROMERO.

Attending witness :

RAMON ROMERO.

Attending witness :

FRANCISCO GAUNA.

At the *hacienda* of San Pedro, and on the eighteenth day of the month of October of eighteen hundred and twenty-eight, I, said judge, there being present citizen Ignacio Elias, for himself and as attorney for his sister Doña Eulalia, the coterminous owners, citizen Captain Ignacio Elias and Nepomuceno Felix, the expert surveyor, lieutenant-colonel of engineers, citizen José Maria Caballero, to whom I gave notice of and made known the foregoing decree, which they understood, and after they accepted the summons and the appointments the twentieth day of said month was designated for going to proceed to the survey, which they signed with me and those in my attendance in the usual manner.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

IGNACIO ELIAS. [Rubric.]

JUAN NEPOMUCENO FELIX. [Rubric.]

JOSÉ DE CABALLERO. [Rubric.]

Attending witness :

RAMON ROMERO. [Rubric.]

Attending witness :

FRANCISCO GAUNA. [Rubric.]

Having arrived at the place called San Ignacio de Babocómari, the twentieth day of said month and year, as the point where the surveys of citizens Captain Ignacio Elias Gonzalez and Nepomuceno Felix end—on the course east northwest by west southwest—accompanied by the party in interest, the expert surveyor, the assistants who are to be appointed, and attending witnesses, I ordered that before beginning the survey an inspection or ocular examination be made of the lands which were about to be surveyed on petition of citizen Ignacio Elias and his principal Doña Eulalia, and after they were well reconnoitered I found them to be places ample for raising large and small stock, the greater part of them having water flowing from permanent springs, with only the drawback of being very dangerous as the hiding places of the hostile Apache. And in witness thereof I enter it as a minute, which I signed with those in my attendance, with whom I act.

For Alejandro Franco:

RAMON ROMERO.	[Rubric.]
IGNACIO ELIAS.	[Rubric.]
JUAN NEPOMUCENO FELIX.	[Rubric.]
IGNACIO ELIAS GONZALEZ.	[Rubric.]
JOSÉ DE CABALLERO.	[Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

On the same day, month, and year, I, the judge, commissioned for the purpose of proceeding to the survey

of the land denounced, on a bald hillock in front of the small marsh of San Ignacio de Babocómari, appointed citizen Lorenzo Sortillon as tallyman, citizens Andres Mendoza and Pablo Elias as chainmen, citizens Antonio Campoy and Mauricio Neira as recorders, and, together with the expert surveyor, citizen Lieutenant-Colonel José Maria Caballero, they accepted said appointments, each for himself, and in the proper manner taking the customary oath to faithfully and lawfully discharge the duty assigned to each, without fraud or deception, and each acting according to his best intelligence and understanding; and those who knew how signed it with me and those in my attendance in the usual manner, to which I certify.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

LORENZO SORTILLON. [Rubric.]

PABLO ELIAS. [Rubric.]

For Andres Montoya, for Antonio Campoy, and Mauricio Neira:

FRANCISCO GAUNA. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

At said place, and on the same day, month, and year, in order to proceed to the survey, there being present the parties in interest, the assistants appointed, and the attending witnesses, I ordered that a cord of fifty *varas* be measured, and, its extremities being tied to two poles,

said survey was proceeded with by the expert surveyor, citizen José M. Caballero, who, setting up his compass, took the course east-northwest quarter east by west-southwest quarter west, where I caused a cross monument to be placed, and from said place, through said point, there were measured and counted one hundred cords, which terminated in a small valley in the neighborhood of some bald hillocks, where I caused a monument to be placed; and, as it was then late, I had the cord taken up, and the assistants and others withdrew to rest till the following day, when the survey would be continued, which I enter as a minute and sign, with those in my attendance and other parties in interest who accompanied me, to which I certify:

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

IGNACIO ELIAS. [Rubric.]

JUAN NEPOMUCENO FELIX. [Rubric.]

IGNACIO ELIAS GONZALEZ. [Rubric.]

LORENZO SORTILLON. [Rubric.]

JOSÉ DE CABALLERO. [Rubric.]

For Antonio Campoy and Mauricio Neira:

FRANCISCO GAUNA. [Rubric.]

For Andres Montoya and for myself:

PABLO ELIAS. [Rubric.]

Attending witness:

RAMON ROMERO.

Attending witness:

FRANCISCO GAUNA. [Rubric.]

At the place where I ordered the second monument put, called the valley of San Ignacio de Babocómari, and accompanied by the party in interest, the expert sur-

veyor, the assistants appointed, in order to continue the survey on the same course, and on the twenty-first day of said month and year, I caused the cord of fifty usual varas to be examined again, and after it was examined and its extremities tied to two poles and the cord extended, there were measured and counted on the same course two hundred and forty-three cords, which terminated on top of a hillock, which faces toward the south-southwest wind, where the survey was suspended because of the broken character of the country, the many and deep gulches that lay in the direction of this survey, for which reason it was necessary for me and the expert surveyor to make an estimate of fifty-seven cords more for the completion of the side of three *sitios* for large stock, this estimate terminating at the hot spring facing the Santa Rita Mountains at the foot of a bald hill, where I ordered placed a corner monument, which faces the slope of said mountain and said hot spring, and from said point, because of the continuance of the broken character of the ground and the deep gulches, in order to form the end line of these *sitios* at right angles to the survey already described on said course, I and the expert surveyor estimated, on the course northwest quarter north-northwest to southeast quarter south-southwest, sixty cords to the foot of a small cottonwood tree, which is in a small valley at the foot of said Santa Rita Mountains, and for the completion of the end or perpendicular line on the opposite course, south-southwest quarter southeast to north-northwest quarter northwest, the other forty cords were estimated, and terminated on a hillock, where there were several oaks, where I ordered the correspond-

ing monuments placed, by which, with these three *sitios* for large cattle and that surveyed the day before, four *sitios* were completed; and, as it was past midday, I ordered that we withdraw to the center monument, which we did. Having reached said monument in front of the marsh of San Ignacio del Babocómari, having had the cord of fifty varas again examined and its extremities tied to the said two poles, the cord being extended on the course west southeast to east northwest, there were measured and counted seventy-four cords, which terminated on top of some hillocks in the vicinity of the end of the water, where, because of being already night, the survey of this day is concluded, all of us withdrawing in order to rest, which I enter as a minute, signing it, together with the party in interest, the expert surveyor, the assistants appointed, and the attending witnesses, to which I certify.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

IGNACIO ELIAS. [Rubric.]

JUAN NEPOMUCENO FELIX. [Rubric.]

LORENZO SORTILLON. [Rubric.]

For Andres Montoya and for myself :

PABLO ELIAS. [Rubric.]

For Antonio Campoy and Mauricio Neira :

FRANCISCO GAUNA. [Rubric.]

IGNACIO ELIAS GONZALES. [Rubric.]

JOSÉ DE CABALLERO. [Rubric.]

Attending witness :

RAMON ROMERO.

Attending witness :

FRANCISCO GAUNA. [Rubric.]



At said place, and on the twenty-second day of said month and year, I, the judge commissioned, the party in interest, the expert surveyor, and other assistants appointed, having caused the cord of fifty *varas* to be examined and the course of the preceding day, the cord being extended on this same course, there were measured and counted twenty-six cords, for the completion of the hundred cords for the side of one *sitio* for large cattle, and on the same course, passing the cord over the tops of several hillocks and gulches, there were measured and counted three hundred cords, the last ones passing through a valley in the vicinity of the tanks from the spring, and these latter terminating above said tanks on a rocky hillock, where I ordered a corner monument placed, with which was completed the side of the other four *sitios* for large stock, where, the compass being set up by the expert surveyor, the cord being placed perpendicularly (*en cuadro*) and forming a right angle or angle of ninety degrees with the preceding course, the cord examined and extended on the course, south-southwest quarter southeast to north-northwest quarter northwest, there were measured and counted forty cords corresponding to those of the preceding end line of the other four *sitios*, these latter terminating on top of some bald hillocks, where I ordered a corner monument placed, and returning to the center of the measurement of this end line, on the opposite course, north-northwest quarter northwest to south-southwest quarter southeast, there were measured and counted sixty cords for the completion of the hundred cords, these latter terminating on the top of a very high hill, with which

the survey was concluded, making the total of eight *sitios* for large stock registered by citizen Ignacio Elias and his sister, Doña Eulalia, and he accepted and was satisfied with said survey, being cautioned to opportunely mark his boundaries with monuments of lime and stone, as is provided. And in witness thereof he signed it with me and all those who knew how with those in my attendance with whom I act *ex officio*, in default of a notary, according to law.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

IGNACIO ELIAS. [Rubric.]

LORENZO SORTILLON. [Rubric.]

For Andres Montoya and for myself:

PABLO ELIAS. [Rubric.]

JUAN NEPOMUCENO FELIX. [Rubric.]

For Antonio Campoy and Mauricio Neira:

FRANCISCO GAUNA. [Rubric.]

IGNACIO ELIAS GONZALES. [Rubric.]

JOSÉ DE CABALLERO. [Rubric.]

Attending witness :

RAMON ROMERO.

Attending witness :

FRANCISCO GAUNA. [Rubric.]

At the estate of San Pedro, and on October 24, 1828, I, the judge commissioner, in order to proceed to the appraisalment and valuation of the lands surveyed in favor of said citizen Ignacio Elias and his sister, Doña Eulalia, comprised of eight *sitios* for cattle between both of them, saw fit to appoint as such appraisers, because I knew they possessed the necessary information, citizens

Pablo Elias and Ramon Romero, residents of the presidio of Santa Cruz, who were present at the survey; and having made said appointment known to them, they accepted it and swore in the manner corresponding to each, promising to make the appraisement without deception, fraud, or collusion; and in virtue thereof, they said together, and in accordance with the examination they had made, and knowing the orders that govern in the matter, that the value of sixty dollars should be given, and they give it to each one of *six sitios* for cattle, because they have permanent water; and to the other remaining two, for the completion of the eight *sitios* for cattle, *ten* dollars each, because they are absolutely without water, with which the total value of the eight *sitios* for cattle amounts to \$380; and having read this declaration to the appraisers, they ratified and signed it with me and those in my attendance with whom I act *ex officio* according to law.

For Alexandro Franco:

	RAMON ROMERO.	[Rubric.]
	PABLO ELIAS.	[Rubric.]
	RAMON ROMERO.	[Rubric.]
Attendance:	RAMON ROMERO.	[Rubric.]
Attendance:	FRANCISCO GAUNA.	[Rubric.]

At the presidio of Santa Cruz on the 29th of said month and year, I, said judge-commissioner, having returned to this presidio and in view of the foregoing proceedings and appraisement of the lands granted to citizen Ignacio Elias and his sister, Doña Eulalia, composed of eight sitios for large and small stock, ordered that they be published for thirty consecutive days, counted from

to-morrow, as provided by law. Thus the judge-commissioner provided and signed, with attending witnesses, to which I certify.

For Alexandro Franco:

RAMON ROMERO. [Rubric.]

Attendance:

RAMON ROMERO. [Rubric.]

Attendance:

FRANCISCO GAUNA. [Rubric.]

*1st publication.* At said place and on the 30th day of the month of October of said year, I, said judge of said presidio, caused various individuals to be called together, at the sound of the drum, in the public (*plaza*) square of said presidio and the public crier, Gregorio Gallegos, to say, in a loud and clear voice in the presence of all of them: The lands of the place called San Ignacio del Babocómari situated in this jurisdiction and comprising 8 sitios for breeding large and small stock in favor of citizen Ignacio Elias and his sister, Doña Eulalia, appraised in the sum of \$380 are sold on account of the nation; whoever desires to make a bid, that he shall make will be admitted upon applying to me. And no bidder having appeared, this minute was entered, which I signed, with those of my attendance.

For Alexandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*2nd publication.* At said presidio, on the thirty-first day of said year and month, another publication was

made similar in all respects to the foregoing, and no bidder having appeared, I entered it as a minute, which I sign, with those in my attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*3rd publication.* At said presidio, on the first of November of one thousand eight hundred and twenty-eight, another publication was made, and no bidders having appeared, it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*4th publication.* At said presidio, on the second day of the month and year aforesaid, another publication was made, and no bidder appearing, this minute was entered, which I signed, with those in my attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*5th publication.* At said presidio, on the third day of said month and year, another publication was made, and no bidder having resulted it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

Attending witness :

RAMON ROMERO. [Rubric.]

Attending witness :

FRANCISCO GAUNA. [Rubric.]

*6th publication.* At said presidio, on the 4th day of said month and year, another publication was made, and no bidder having appeared I entered this minute, which I signed, with those in attendance.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

Attending witness :

RAMON ROMERO. [Rubric.]

Attending witness :

FRANCISCO GAUNA. [Rubric.]

*7th publication.* At said presidio, on the 5th day of said month and year, another publication was made, and there being no bidder it was entered as a minute, which I signed, with those in my attendance.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

Attending witness :

RAMON ROMERO. [Rubric.]

Attending witness :

FRANCISCO GAUNA. [Rubric.]

*8th publication.* At said presidio, on the 6th day of said month and year, another publication was made, and no bidder having appeared it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*9th publication.* At said presidio, on the seventh day of said month and year, another publication was made, and no bidder having appeared it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*10th publication.* At said presidio, on the eighth day of the current month and year, another publication was made, and no bidder having resulted it was entered as a minute, which I signed, with those of my attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*11th publication.* At said presidio, on the ninth day of said month and year, another publication was made, and no bidder having appeared it was entered as a minute, which I signed, with those in my attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*12th publication.* At said presidio, on the tenth day of said month and year, another publication was made, and no bidders having resulted it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*13th publication.* At said presidio, on the eleventh day of said month and year, another publication was made, and no bidder having resulted it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]



*14th publication.* At said presidio, on the twelfth day of said month and year, another publication was made, and no bidder having appeared it was entered as a minute, which I signed, with the attending witnesses.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*15th publication.* At said presidio, on the thirteenth day of said month and year, another publication was made, and there being no bidder it was entered as a minute, which I signed, with those in attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*16th publication.* At said presidio, on the fourteenth day of said month and year, another publication was made, and no bidder having resulted it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*17th publication.* At said presidio, on the fifteenth day of said month and year, another publication was made, and no bidder having appeared it was entered as a minute, which I signed, with those in my attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*18th publication.* At said presidio, on the sixteenth day of said month and year, another publication was made, and no bidder having resulted it was entered as a minute, which I signed, with those in my attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*19th publication.* At said presidio, on the seventeenth day of said month and year, another publication was made, and no bidder resulting it was entered as a minute, which I signed, with those in attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*20th publication.* At said presidio, on the eighteenth day of said month and year, another publication was

made, and no bidder having resulted it was entered as a minute, which I signed, with those in attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*21st publication.* At said presidio, on the nineteenth day of said month and year, another publication was made, and no bidder having resulted ~~it was entered as a~~ minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO. [Rubric.]

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*22d publication.* At said presidio, on the twentieth day of said month and year, another publication was made, and there being no bidder, it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO.

Attending witness:

RAMON ROMERO.

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*23d publication.* At said presidio, on the twenty-first day of said month and year, another publication was made, and there being no bidders, it was entered as a minute, which I signed, with those in attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO.

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*24th publication.* At said presidio, on the twenty-second day of said month and year, another publication was made, and no bidder having resulted, it was entered as a minute, which I signed, with those in attendance, according to law.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO.

Attending witness:

FRANCISCO GAUNA. [Rubrics.]

*25th publication.* At said presidio, on the twenty-third day of said month and year, another publication was made, and no bidder appearing, it was entered as a minute, which I signed, with those in my attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO.

Attending witness:

FRANCISCO GAUNA. [Rubric.]

*26th publication.* At said presidio, on the twenty-fourth day of said month and year, another publication was made, and no bidder resulting, it was entered as a minute, which I signed, with those in my attendance.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

Attending witness :

RAMON ROMERO.

Attending witness :

FRANCISCO GAUNA. [Rubric.]

*27th publication.* At said presidio, on the twenty-fifth day of said month and year, another publication was made, and no bidder having appeared, it was entered as a minute, which I signed with those in my attendance.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

Attending witness :

RAMON ROMERO.

Attending witness :

FRANCISCO GAUNA. [Rubric.]

*28th publication.* At said presidio, on the twenty-sixth day of said month and year, another publication was made, and there being no bidder, it was entered as a minute, which I signed, with those in my attendance, according to law.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

Attending witness :

RAMON ROMERO.

Attending witness :

FRANCISCO GAUNA. [Rubric.]

*29th publication.* At said presidio, on the twenty-seventh day of said month and year, another publication was made, and no bidder resulting it was entered as a minute which I signed, with those in my attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO.

Attending witness:

FRANCISCO GAUNA. [Rubrics].

*30th publication.* At said presidio, on the twenty-eighth day of said month and year, the last publication was made, and no bidder having resulted it was entered as a minute which I signed, with those in my attendance.

For Alejandro Franco:

RAMON ROMERO. [Rubric.]

Attending witness:

RAMON ROMERO.

Attending witness:

FRANCISCO GAUNA. [Rubrics].

At said presidio, on said day, month, and year, these proceedings being concluded, forward them to the treasurer-general, upon citation of the party in interest, to the end that, going in person or by attorney to the capital at Alamos, he may be present at the three offers of sale of the lands published which are to be made at said capital. I, the judge commissioned, so decreed, ordered

and signed it, with those in my attendance according to law.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

Attending witness :

RAMON ROMERO.

Attending witness :

FRANCISCO GAUNA. [Rubrics.]

Thereupon, on said day, month, and year, citizen Ignacio Elias being present for himself and as the attorney of his sister, Doña Eulalia, I gave him notice of and made known to him the foregoing decree, and, after acknowledging service thereof, he signed it with me and those in my attendance with whom I act *ex officio* according to law.

For Alejandro Franco :

RAMON ROMERO. [Rubric.]

IGNACIO ELIAS. [Rubric.]

Attending witness :

RAMON ROMERO.

Attending witness :

FRANCISCO GAUNA. [Rubrics.]

*Note.*—These proceedings were forwarded with an official communication dated November 30, 1828, to the treasurer-general of the state, and in witness thereof, I attached my rubric thereto.

GAXIOLA. [Rubric.]

Citizen treasurer-general :

These proceedings contain the survey of eight *sitios* of land for breeding large stock and horses, made by the

justice of Santa Cruz, in the places of San Ignacio del Babocómari. I find nothing by way of objection to allowing them to be adjudicated to the applicants, unless it is that they are in excess of the number that can be granted by article 21 of the decree of May 20, 1825; nevertheless, if you are satisfied as to the requirements presented in the 22nd, I am of opinion that they may be sold in favor of the petitioners, unless another higher bidder appears.

Alamos, December 20, 1828.

FELIPE GIL. [Rubric.]

ALAMOS, *December 22, 1828.*

Concurring in the opinion of the fiscal attorney, it was my duty to order, and I do order, that the members of the board of sales be summoned for the purpose of making the last three offers and final sale of the land described in these proceedings.

GAXIOLA. [Rubric].

*1st offer.* In the city of Concepción de Alamos, on the twenty-second day of the month of December, of eighteen hundred and twenty-eight, the president and members that compose the board of sales having assembled for the purpose of making the first offer of the lands to which these proceedings refer, they ordered that various citizens be called together, at the sound of the drum, in the office of this treasury, and that, in their presence, Marcelo Parra, who acted as crier, proceed to make a publication, as he in fact did, in a loud and clear voice, saying: "The lands at the place called San Ignacio del Babocómari, situate in the jurisdiction of the presidio of



Santa Cruz, comprising eight *sitios* for breeding large stock and horses and small stock, surveyed in behalf of Don Ignacio Elias and Doña Eulalia Elias, and appraised at three hundred and eighty dollars. Whoever desires to make a higher bid, let him come before this board, where the bid he makes will be admitted." And no person whatever having appeared, it was entered as a minute in testimony thereof.

GAXIOLA. [Rubric.]

ALMADA. [Rubric.]

GIL. [Rubric.]

*2nd offer.* In said city, on the twenty-third day of the month of December of eighteen hundred and twenty-eight, the president and members that compose the board having assembled for the purpose of making the second offer of the lands set out in these proceedings, they ordered that it be made in the same terms as the first one preceding, which was done, he who acted as crier adding merely that on to-morrow the final sale would be made. And no bidder having appeared, it was entered as a minute in witness thereof, which the members of the board signed.

GAXIOLA. [Rubric.]

ALMADA. [Rubric.]

GIL. [Rubric.]

*3rd offer.* In said city of Concepción, on the twenty-fourth day of said month and year, the president and members of said board of sales having assembled, they ordered that the third offer and final sale of the lands mentioned in these proceedings be made, which was done.

in the same manner as at the two former offers, the crier adding only that at this moment the final sale is to be made. And the hour for noonday prayer of this day having been sounded without any bidder appearing, the crier announced finally in a loud voice: "One, two, three. Let it be sold, sold, sold. May it do good, good, good, to Don Ignacio Elias and Doña Eulalia Elias." In these terms this act was concluded, the eight *sitios* of land for breeding large stock and horses at the place called San Ignacio del Babocómari, jurisdiction of the Presidio of Santa Cruz, being publicly and solemnly sold in favor of said parties in interest, for the sum of three hundred and eighty dollars, at which they were appraised.

And in due witness thereof this minute is entered, which the president and members of the board signed, with Captain Ignacio Elias as attorney of the parties in interest.

GAXIOLA.	[Rubric.]
ALMADA.	[Rubric.]
GIL.	[Rubric.]
IGNACIO ELIAS GONZALES.	[Rubric.]

ARISPE, *October 19, 1832.*

The payment of three hundred and eighty dollars, at which were sold the eight *sitios* of land comprised in the place called San Ignacio del Babocómari in behalf of citizen Ignacio Elias and Doña Eulalia Elias, the first a resident of the town of Rayon and the second of this capital, having been made into the office of the treasurer-general of the united State, as shown by the certificate

aggregated to these proceedings, let formal title to the grant be issued for their security. The treasurer-general of the State of Sonora so ordered and signed it, with attending witnesses, according to law.

MENDOZA. [Rubric.]

Attending witness :

MARIANO ROMO. [Rubric.]

Attending witness :

LUIS CARRANCO. [Rubric.]

On the twenty-fifth of December, 1832, title was issued to the grant of land of Babocómari, to which these proceedings refer.

MENDOZA. [Rubric.]

I, Nicolas Maria Gaxiola, treasurer-general of the revenues of the State of the Occident,

Certify that, at leaf 3, reverse, of the manual of this treasury for the current year, there is entered under this date the following entry:

Receipts for grants of lands, three hundred and eighty dollars paid by Captain Don Ignacio Elias in the name of Don Ignacio Elias and Doña Eulalia Elias, residents of Arispe, for the grant of eight *pitios* of land for breeding large stock and horses at the place called San Ignacio de Babocómari, jurisdiction of the presidio of Santa Cruz, appraised at said sum, which were sold in their favor without any opposition by the board of sales held in this office of the treasurer on the twenty-fourth day of last December. \$380.

GAXIOLA. [Rubric.]

IGNACIO ELIAS GONZALES. [Rubric.]

And in witness thereof I give these presents in Alamos, on the eighth of January, eighteen hundred and twenty-nine.

NICOLAS MARIA GAXIOLA. [Rubric.]

Crossed out—C—of no value—between lines—said, Lorenzo Sortillon, Juan Nepomuceno Felix—good.

It is an exact copy of its original, which I authenticate and sign in Hermosillo on the eighth of February, eighteen hundred and ninety-eight.

V. AGUILAR.

○

## Opinion of the Court.

## PERRIN v. UNITED STATES.

## APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

No. 30. Argued March 16, 17, 1898. — Decided May 31, 1898.

*Camou v. United States*, ante, 277, followed.

THE case is stated in the opinion.

*Mr. Byron Waters* and *Mr. John T. Morgan* for appellant.

*Mr. J. H. Meredith* filed a brief for same.

*Mr. Special Assistant Matthew G. Reynolds* for appellees.  
*Mr. Solicitor General* was on his brief.

MR. JUSTICE BREWER delivered the opinion of the court.

So far as the question of title is concerned this case is similar to the one immediately preceding, *Camou v. United States*, ante, 277. For reasons therein stated the decree of the Court of Private Land Claims will be reversed and the case remanded for further proceedings. It is true, as suggested in its opinion, the Court of Private Land Claims thought that there was no sufficient location of the tract in controversy, and that probably the grant was void for uncertainty in the description of the property. It may be that this conclusion was right. At the same time, in view of what has been recently said by this court in respect to boundaries, description and area, we think that justice requires that we reverse the judgment and remand the case for further proceedings. Perhaps the claimants may be able to satisfactorily identify a tract not larger than the area purchased and paid for which should equitably be recognized as the tract granted.

*Reversed*